

TASMANIA POLICE

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Dr Brendan Gogarty
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Dear Dr Gogarty

SEXUAL ORIENTATION AND GENDER IDENTITY CONVERSION PRACTICES, ISSUES PAPER No 31

Thank you for providing Tasmania Police with a copy of Issues Paper No 31 'Sexual Orientation and Gender Identity Conversion Practices'. I am pleased to provide comment on this important work.

Tasmania Police is deeply supportive of the LGBTQA+ community and of ensuring appropriate protections are in place for harms those individuals may face. Tasmania Police is committed to an inclusive and diverse workplace through a formalised Support Network and to maintaining and developing positive relationships in the Tasmanian LGBTQA+ community through the Police Liaison Officer Program.

Anecdotally, I am informed that police in Tasmania are not receiving reports about the type of behaviour or practice outlined in the Issues Paper, but as the paper notes, it is not possible to draw conclusions from this (3.2.20). In this context, Tasmania Police has no comment on the need for, or appropriateness of law reform on the Sexual Orientation and Gender Identity (SOGI) conversion practices.

Criminal responsibility and civil liability

Tasmania Police supports the observation, per the Issues Paper, that the common law protects freedoms of thought, conscience and religion (1.2.10). Tasmania Police recognise that there is a complex balance between protecting these rights and using the criminal law to protect the vulnerable and marginalised from harm.

Tasmania Police acknowledges the observations of the Issues Paper at 3.2.1-3.2.3 on the criminal law in Tasmania and also recognises the legitimate concerns regarding the uncertainty of the law

raised at 3.3.20. We note that the current trends in other Australian jurisdictions limit the scope of the criminal law in relation to SOGI conversion practices to health and medical practitioners.

It should be noted that offences that require ideological motivations are likely to complicate the process of police investigation and prosecution for activities that otherwise constitute unlawful behaviour. The TLRI is correct, in the view of Tasmania Police, to assert that law enforcement agencies do not have the capacity or expertise to investigate or prosecute matters that require establishment of an ideological basis for an act (1.2.14).

The TLRI has noted that SOGI conversion practices might constitute statutory offences such as stalking, bullying, assault and other applications of force (3.2.3). In the context of the legislation in Queensland and the ACT and the complications of investigating and prosecuting ideologically motivated offending, Tasmania Police supports the strength of existing criminal laws to address SOGI conversion practices that take place outside of the health and medical fields.

In addition to the observations on civil law at 3.24-3.2.7, Tasmania Police points to the recent amendments to the *Civil Liability Act 2002* in which Part 10C – Child Abuse – Liability of Organisations was inserted into the Act. The literature on SOGI conversion practices indicates that such practices outside health and medical practice are usually embedded in organisations that fit within the scope of these amendments. The *Civil Liability Act 2002* may now provide additional mechanisms for redress for SOGI conversion practices experienced by children.

Consent

Tasmania Police has considered the question of whether a person may consent to SOGI conversion practices. The *Criminal Code* currently contains section 2A, which provides extensively for the definition of consent in relation to unlawful criminal acts. Tasmania Police considers that the current model in relation to consent adequately provides for circumstances in which a person may or may not be able to consent to what would otherwise amount to unlawful acts.

Definition of SOGI conversion practices

Noting that the TLRI has not reached the stage of defining SOGI conversion practices for the purpose of law reform, Tasmania Police asks the TLRI to continue to be cognisant of the very real difficulties of investigating and prosecuting ideologies (1.2.14).

Models and approaches

In considering the provisions from other jurisdictions in Australia and overseas in Appendix A, Tasmania Police notes that Queensland has reformed its *Public Health Act 2005* (Qld) to create offences in relation to conversion therapies. Tasmania Police does not suggest the Tasmanian *Public Health Act 1997* as an appropriate vehicle for any potential criminal law reform as the Queensland and Tasmania Acts are different in their focus and content. The Tasmanian *Criminal Code* contains criminal provisions in relation to the provision of medical treatment and could be considered as an appropriate location for any legislative intervention to criminalise SOGI conversion practices in the future.

If you would like to discuss this submission further, please feel free to contact [REDACTED] on [REDACTED] or by email at [REDACTED] or [REDACTED] on [REDACTED] or by email at [REDACTED]

I appreciate the opportunity to comment on this Issues Paper.

Yours sincerely

A handwritten signature in black ink, consisting of a large, stylized 'S' that loops back and crosses itself, followed by a smaller 'A' and 'T'.

S A TILYARD

Acting Commissioner of Police