

Submission re Tasmanian Law Reform Institute Sexual Orientation and Gender Identity Conversion Practices Issues Paper

via Law.Reform@utas.edu.au

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To whom it may concern

Thank you for the opportunity to make a submission on this important topic.

I do so as a long-term advocate for Australia's lesbian, gay, bisexual, transgender and intersex (LGBTI) community, including through my website www.alastairlawrie.net

While my primary law reform focus is on improving LGBTI anti-discrimination and anti-vilification legislation, I have also previously made multiple submissions in relation to sexual orientation and gender identity conversion practices, including in New South Walesⁱ and Victoria.ⁱⁱ

In this submission, I will attempt to answer most, although not all, of the answers posed in the Issues Paper.

However, I also wish to acknowledge that the most important voices in this debate are those of the survivors of these abhorrent practices, including survivors of sexual orientation and gender identity conversion practices in Tasmania.

Therefore, where my answers may diverge from the submissions made by survivors, both individuals and organisations, I urge you to prioritise their views as the experts on the wide scope of these practices, the serious harms they cause and the most effective way(s) in which to prohibit them.

Question 1: After considering the background and working definition, in your opinion, what are and are not 'sexual orientation and gender identity conversion practices'?

In my view, the terminology 'sexual orientation and gender identity conversion practices' is appropriate, as it avoids the limitations of alternatives such as 'ex-gay or ex-trans therapy'.

I defer to survivors on the matter of all of the possible acts that should be included in any definition. However, the scope of any definition must *not* be limited to only cover conversion practices which occur in health settings (a mistake made in the *Queensland Health Legislation Amendment Act 2020*).

On the other hand, it must cover conversion practices which occur in religious settings, both formal and informal, because that is where survivors tell us most of the harm is inflicted.

In terms of the possible definition, I think the TLRI working definition captures the core components of conversion practices:

- (a) acts or statements;
- (b) that are aimed at changing, suppressing, or eradicating the sexual orientation or gender identity of another person; and
- (c) are based on a claim, assertion or notion that non-conforming sexual orientation or gender identity is a physical or psychological dysfunction that can be suppressed or changed.

My one concern in this definition is the use of the word 'non-conforming', implying that there are sexual orientations or gender identities which do conform, or are 'the norm'.

I would suggest consideration of alternative phrasing, perhaps to words to the effect of 'that a sexual orientation that is not heterosexuality or a gender identity that is not cisgender'.

This wording may also help to ensure that support services for same-sex attracted and gender diverse people exploring their identities, as well as assistance for people considering or undergoing a gender transition, are not captured in the definition (noting these have been expressly excluded in both the Queensland legislation, and the ACT *Sexuality and Gender Identity Conversion Practices Act 2020*).

Finally, I support the inclusion of removing a person from Tasmania for the purpose of sexual orientation and gender identity conversion practices conducted outside the state in any definition and/or offences, because the harm is still inflicted on Tasmanians.

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

No, I do not believe it is possible to 'consent' to SOGI conversion practices, even for adults.

The ideology which underpins conversion practices – that people who are same-sex attracted or gender diverse are 'broken' and require 'fixing' – is dangerous and incredibly harmful. The ideology is also erroneous – LGBT people are beautiful, just as we are – meaning any consent derived from it is based on a falsehood.

In addition, people who have been indoctrinated with this abusive ideology, whether in familial, educational, health and/or religious settings, and therefore experience severe shame about who they are, are not in a position to provide genuine consent to what is simply further abuse.

As someone who attended a deeply homophobic religious boarding school in Queensland in the 1990s – where same-sex attraction was demonised from the school rules to the pulpit (with one pastor suggesting suicide was not the worst possible outcome for children struggling with their sexual orientation)ⁱⁱⁱ – and consequently developed profound self-loathing, I may have even participated in more-formal conversion practices had they been offered, either at the school or afterwards.

I don't believe that my 'consent' in such circumstances would have been any more real on the day I turned 18 than the day before.

The practices themselves are the problem, and they should be unlawful irrespective of who is being subjected to them.

On the other hand, I do support potential differentiation in penalty on the basis of who is being harmed. For example, while sexual orientation and gender identity conversion practices should be unlawful in all circumstances, I favour increased maximum sentences where the victim is a child or young adult under the age of 18 or a person with decision-making impairments (to use the terminology outlined in the Issues Paper).

Question 3: Have you been involved in or offered, or are you aware of, any forms of SOGI conversion practices in Tasmania? If so, what were the effects on you, or the person exposed to them?

Not applicable.

Question 4: Do you think that Tasmanian law should be changed to address SOGI conversion practices? If so, should this be through comprehensive reform, amendment or both (a hybrid)?

I do not believe current Tasmanian laws are sufficient to deal with the harms caused by sexual orientation and gender identity conversion practices. Nor do I believe they can be addressed simply by amendments to existing laws. Therefore, I support either comprehensive reform, or a hybrid approach.

This would, at a minimum, include creating criminal offences covering sexual orientation and gender identity conversion practices, as well as providing civil remedy options to ensure that survivors of these abuses have the ability to seek financial compensation.

As discussed in my answer to question 2, above, I believe these responses (criminal offences *and* civil remedies) should cover all people who are subjected to sexual orientation and gender identity conversion practices. However, the available penalties should be higher where the person subject to harm is a child or young adult under the age of 18 or a person with decision-making impairments.

Question 5: Should some or all forms of SOGI conversion practices be criminalised in Tasmania? If so, which, if any should be dealt with as serious (indictable) crimes and which, if any, should be dealt with as less serious (summary) offences?

Yes, sexual orientation and gender identity conversion practices should be criminalised.

Given the serious harms caused by these practices, I believe that at least some of these activities should constitute indictable offences.

As indicated in my answers to both questions 2 and 4, above, I also believe there should be higher maximum penalties where the person subject to harm is a child or young adult under the age of 18 or a person with decision-making impairments. This may involve the creation

of separate offences, or the inclusion of age and decision-making capacity as aggravating factors in sentencing.

Again, given the seriousness of the harms inflicted by sexual orientation and gender identity conversion practices, I believe that imprisonment should be an option, particularly for the worst instances of abuse (although, being unfamiliar with sentences under Tasmanian criminal law, I am not in a position to recommend a maximum term of imprisonment).

Finally, as indicated in my response to question 1, I believe these offences must extend beyond just health practitioners to include religious settings, both formal and informal, because that is where survivors tell us most of the harm is inflicted, as well as other areas (for example, educational settings).

Question 6: Should some or all forms of SOGI conversion practices be made civil wrongs in Tasmania? If so, what sort of practices should people be liable for and how should those subject to such practices be compensated?

Yes, sexual orientation and gender identity conversion practices should be made civil wrongs in Tasmania, in addition to being subject to criminal sanctions. This is necessary to allow the people harmed by such abuses to seek financial compensation.

Given people who have been exposed to the harmful ideology which underpins conversion practices may not be aware for some time afterwards that what they experienced was, in fact, abuse, I am in favour of extending the limitation period beyond the ordinary three years, and potentially up to 12 years.

Question 7: Should any existing Tasmanian laws (besides criminal laws or the *Civil Liability Act 2002 (Tas)*) be amended to cover SOGI conversion practices? If so, which ones and in which ways?

Provided that sexual orientation and gender identity conversion practices are covered by both criminal penalties and civil remedies (including financial compensation), I am agnostic about the specific vehicle(s) to deliver the latter.

I note that inclusion within Tasmania's best practice anti-discrimination framework, via the *Anti-Discrimination Act 1998*, may confer some benefits (including in terms of access to dispute resolution, potential lesser exposure to costs as well as possible greater variation in outcomes such as public apologies).

Inclusion in the *Anti-Discrimination Act* may also allow the Anti-Discrimination Commissioner to investigate conversion practices, even in the absence of a specific complaint from survivors.

However, I defer to the views of survivors about their preferred regulatory approach.

Question 8: Are there any other models or approaches that are preferable to, or should complement, changing the law?

I also defer to survivors, both individuals and organisations, about the best ways to detect or report sexual orientation and gender identity conversion practices.

However, I agree with the view expressed in the Issues Paper that it may be difficult to enforce any law against these abuses.

This includes both the criminal law – where it may be difficult to establish proof beyond a reasonable doubt (although I nevertheless support the creation of criminal offences to send a strong public statement that such practices are contrary to community interests, are wrong, and are fundamentally harmful).

And it will also be difficult to enforce under civil law because it will place the onus on people who have experienced psychological abuse (and potentially physical abuse, too) to bring actions and to therefore possibly be retraumatised through the litigation process.

As with most complex problems, legislation alone will never be sufficient on its own to combat the ills of sexual orientation and gender identity conversion practices.

This is especially true because eliminating such practices also means eradicating the harmful ideology which underpins it (that people who are same-sex attracted or gender diverse are ‘broken’ and require ‘fixing’). That will require the concerted and sustained efforts of government and non-government organisations, in partnership with survivors.

I obviously defer to survivor organisations about which support and other services require funding to accomplish this objective.

Question 9: Are there any other matters that you consider relevant to this Inquiry and would like to raise?

I agree with the view expressed in the Issues Paper that criminalisation may drive sexual orientation and gender identity conversion practices further underground.

However, I do not believe this risk is sufficient to justify not prohibiting practices which inflict severe harm on many of the community’s most vulnerable people, including LGBT children and young adults.

This risk can also be mitigated by ensuring that law enforcement is appropriately trained and resourced to address the serious problems caused by conversion practices, as well as empowering an independent authority to investigate systemic issues (for example, the Tasmanian Anti-Discrimination Commissioner, as discussed above in response to Question 7).

Finally, I understand that some groups may oppose any regulation in this area on the basis of ‘religious freedom’.

However, such opposition does not understand that freedom of religion is not absolute. As Article 18(3) of the *International Covenant on Civil and Political Rights* makes clear:

Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others.

Laws which seek to protect people against sexual orientation and gender identity conversion practices – which, in my view, constitute psychological torture and can and in many cases do lead to adverse mental health outcomes including depression, self-harm and even suicide – would therefore be clearly justified under international human rights law.

Thank you in advance for your consideration of this submission. Please do not hesitate to contact me, at the details provided, should you require additional information.

Sincerely

Alastair Lawrie

Footnotes:

ⁱ Submission to NSW Parliament Inquiry into False or Misleading Health Practices re Ex-Gay Therapy and Intersex Sterilisation, 16 June 2014. Available at <https://alastairlawrie.net/2014/06/16/submission-to-nsw-parliament-inquiry-into-false-or-misleading-health-practices-re-ex-gay-therapy-and-intersex-sterilisation/>

ⁱⁱ Submission to Victorian Government Consultation on Banning Conversion Practices, 24 November 2019. Available at: <https://alastairlawrie.net/2019/11/24/submission-to-victorian-government-consultation-on-banning-conversion-practices/>

ⁱⁱⁱ I have previously written about my experiences at that school, here: **The longest five years.** <https://alastairlawrie.net/2019/03/17/the-longest-five-years/>