

COMMUNITY LEGAL CENTRES TASMANIA

5 February 2021

Tasmania Law Reform Institute
Private Bag 89
HOBART TAS 7001
attn: Dr Brendan Gogarty and Dr Martin Clark

via email: law.reform@utas.edu.au

To the Tasmania Law Reform Institute,
Re: *Sexual Orientation and Gender Identity Conversion Practices*

Community Legal Centres Tasmania (CLC Tas) welcomes the opportunity to provide comment on the *Sexual Orientation and Gender Identity Conversion Practices Issues Paper*.

CLC Tas is the peak body representing the interests of nine community legal centres (CLCs) located throughout Tasmania. We are a member-based, independent, not-for-profit and incorporated organisation that advocates for law reform on a range of public interest matters aimed at improving access to justice, reducing discrimination and protecting and promoting human rights.

In 2015 a joint statement issued by the World Health Organisation and 11 other United Nations agencies called on States around the world to protect LGBTI persons from “discrimination and violence” including “unethical and harmful so-called ‘therapies’ to change sexual orientation...”¹ A year later, the UN Committee on the Rights of the Child urged States to “eliminate such practices”.² In Australia, the Australian Medical Association and the Australian Psychological Society both have position statements opposing conversion practices.³

¹ United Nations, ‘United Nations Entities Call on States to Act Urgently to End Violence and Discrimination against Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) Adults, Adolescents and Children’ (Statement, September 2015). As found at http://www.ohchr.org/Documents/Issues/Discrimination/Joint_LGBTI_Statement_ENG.PDF (Accessed 31 January 2021).

² United Nations Committee on the Rights of the Child, General comment No. 20 (2016) On the implementation of the rights of the child during adolescence (6 December 2016) para. 34. As found at <https://www.refworld.org/docid/589dad3d4.html> (Accessed 31 January 2021).

³ Australian Medical Association, Sexual Diversity and Gender Identity Position Statement, para. 6.10; Australian Psychological Society, APS Position Statement on Psychological Practices that attempt to

The United Nations Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity has defined conversion therapy as follows:⁴

‘Conversion therapy’ is used as an umbrella term to describe interventions of a wide-ranging nature, all of which are premised on the belief that a person’s sexual orientation and gender identity, including gender expression, can and should be changed or suppressed when they do not fall under what other actors in a given setting and time perceive as the desirable norm, in particular when the person is lesbian, gay, bisexual, trans or gender diverse.

We strongly believe that Australia’s ratification of human rights instruments means that the Tasmanian Government has both an obligation and duty to statutorily protect those rights at a local level. As the United Nations Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity has noted, conversion practices violate the right of persons to “enjoy the highest attainable standard of physical and mental health”.⁵ Other rights that are violated include freedom from discrimination and the right to privacy.⁶ In relation to children, article 3(1) of the *Convention on the Rights of the Child* enshrines the principle that “in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration”. And, in its commentary about the Convention of the Rights of the Child, there was an emphasis on “the rights of all adolescents to freedom of expression and respect for their physical and psychological integrity, gender identity and emerging autonomy” and a condemnation of “the imposition of so-called ‘treatments’ to try to change sexual orientation”.⁷

Question 1: What are and are not ‘sexual orientation and gender identity conversion practices’?

We strongly believe that any practice that seeks to change or suppress a person’s sexual orientation or gender identity should be prohibited subject to limited exceptions. The definition should be broad enough to capture practices carried out by religious institutions including counselling, prayer, scripture reading, fasting, retreats and ‘spiritual healing’. The broad principles-based definition recommended by the Tasmania Law Reform Institute is supported.

However, in our view it is important that the definition should expressly exclude supportive medical and psychological practices that are in line with professional standards, including support for a person who is seeking to affirm their gender identity

change Sexual Orientation (2015). As found at <https://www.psychology.org.au/getmedia/ebd486a2-761c-403c-bdef-406fda87dc4b/Position-Statement-Sexual-Orientation.pdf> (Accessed 31 January 2021).

⁴ United Nations, ‘Practices of so-called “conversion therapy”’, Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, Victor Madrigal-Borloz, UN GAOR, 44th sess, Agenda Item 3, UN Doc A/HRC/44/53 (1 May 2020) at para. 17.

⁵ Article 12 of the *International Covenant on Economic, Social and Cultural Rights*.

⁶ Articles 2(1), 17 and 26 of the *International Covenant on Civil and Political Rights*.

⁷ United Nations Committee on the Rights of the Child, General comment No. 20 (2016) On the implementation of the rights of the child during adolescence (6 December 2016) para. 34. As found at <https://www.refworld.org/docid/589dad3d4.html> (Accessed 31 January 2021).

by undergoing gender transition. A useful model that should be adopted in Tasmania is set out in the Victorian Bill.⁸

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

In the Australian Capital Territory, sexual orientation and gender identity conversion practices is only an offence where the subject is a child or person with impaired decision-making abilities.⁹ In our opinion, deterrence is best achieved when all members of the community are made aware that regardless of age, sexual orientation and gender identity conversion practices constitute a criminal offence. The express legal recognition that conversion practices carried out against adults and children amounts to an offence will send a message that the conduct is ineffective, not based in science and harmful.

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

We strongly believe that Tasmania should introduce a standalone Act rather than amending the *Criminal Code Act 1924* (Tas) or *Public Health Act 1997* (Tas). In our opinion, the advantage of a single statute is its ability to comprehensively respond to sexual orientation and gender identity conversion practices including setting out the purpose of the legislation, providing a legal definition of conversion practices and outlining exceptions to the offence including defences.

The Victorian model with its emphasis on both criminal and civil responses is recommended as a model that should be adopted in Tasmania. In particular, the Victorian model allows for the escalation of penalties in response to the harm caused by conversion practices with the Victorian Equal Opportunity and Human Rights Commission empowered to undertake investigations and impose civil penalties whilst the police can charge and prosecute for more serious offences.

Yours faithfully,



Benedict Bartl

Policy Officer

Community Legal Centres Tasmania

⁸ Clause 5(2) of the *Change or Suppression (Conversion) Practices Prohibition Bill 2020* (Vic).

⁹ Section 8 of the *Sexuality and Gender Identity Conversion Practices Act 2020* (ACT).