



Australia

Tasmania Law Reform Institute

“Sexual Orientation and
Gender Identity Conversion Practices”

Joint Submission by

Christian Schools Australia (CSA)

Adventist Schools Australia (ASA)

For further discussion regarding this submission please contact:

Christian Schools Australia

Mr Mark Spencer,
Director of Public Policy

██████████

████████████████████

Adventist Schools Australia

Dr Daryl Murdoch,
National Director

██████████

██

Introduction

Christian Schools Australia (CSA) and Adventist Schools Australia (ASA) are national bodies that support and represent schools for whom religious formation is an integral part of the education process.

In combination, CSA and ASA schools educate more than 80,000 students across more than 250 locations nationally. Within Tasmania, member schools of these groups educate around 500 students. Globally, CSA is part of the Association of Christian Schools International (ACSI). There are 24,000 schools educating in excess of 5.5 million students in over 108 countries around the world within this network. ASA schools are part of the wider Adventist Church, which educates around 2 million students globally.

Member schools of CSA operate as independent, locally governed, religious organisations. Some are closely aligned with one or more Christian churches in their communities, while others have their heritage in a group of parents coming together to start a school. ASA schools operate on a systemic basis, with small systems established in line with wider Adventist Church governance arrangements.

Abhorrent 'therapeutic' practices should be banned

It is important to be clear that the abhorrent practices of the mid-20th century cannot, and are not, in any way supported by this group. The use of lobotomies, chemical castration with hormonal treatment, aversive treatments including the application of electric shock to the hands and/or genitals as part of the treatment regimens once promoted by prominent mainstream medical and psychiatric practitioners, is rightly condemned, more so if undertaken coercively.

We would actively support the introduction of legislation to clearly and unequivocally ban such practices.

Responses to Questions in the Issues Paper

Question 1: After considering the background and working definition (see [1.3.23] on page 13), in your opinion, what are and are not 'sexual orientation and gender identity conversion practices'?

The proposed definition of 'sexual orientation and gender identity conversion practices' is:

1. Based on an inappropriate approach to the regulation on this issue,
2. Far too broad in scope,
3. Conflates two distinct issues incorrectly, and consequently
4. Reduces available treatment pathways.

Approach to regulation

The Issues Paper indicates that the Tasmanian Law Reform Institute (TLRI) has a ‘preference for a principles-based approach to regulation’.¹ Even in the context of financial market regulation, the source used to justify this approach acknowledged that this approach can result in:²

- **lack of certainty** – a lack of a common understanding of a principle’s meaning and application in particular circumstances. This is problematic enough when applied to an industry with specialist knowledge, but this problem is amplified when the general public is required to comply with the principle. It is certainly completely unacceptable to have such uncertainty in relation to actions that may result in criminal sanctions.
- **proliferation of guidance** – with a number of problems arising from this, not the least of which is that the principles-based approach “becomes rule-based regulation by the back door – in a way that avoids the usual checks and balances which apply to the promulgation of formal rules”.³ This has certainly been the experience in relation to the pronouncement and guidance of human rights/equal opportunity/anti-discrimination bodies around the country.
- **regulatory creep and blurring of the distinction between minimum standards and best practice** - once again, there has been considerable experience of this occurring across other areas of human rights law.
- **an increasing gap between internal guidance and published Principles, rules and guidance** – which has also been encountered on a regular basis in other areas of human rights law. Internal advice from the legal counsel of a large media publisher still preclude advertisements from Christian schools for “committed Christians” to fill non-teaching staff positions despite clear exemptions in the relevant anti-discrimination law.
- **accountability issues** – as the regulatory creep and impact of ‘guidance’ noted above undermines proper accountability of this de facto legislation.
- **unpredictability and the risk of over-zealous/hindsight-driven enforcement** – while significant issues in the context of the financial market regulation, are of even greater concern when applied more broadly and especially when criminal sanctions are being considered. Further, it is a serious enough concern that decisions about the interpretation of principles may be “enforced after the event, sometimes in a politically charged environment” in the context of well-resourced financial sector firms about to mount expensive legal defences. It is an altogether far more serious concern when parents, individual medical practitioners, pastors or even charities such as schools or churches may be subject to enforcement in these circumstances.
- **inappropriate skills and mindset of regulators and regulated** – while the paper focusses on the potential impact on innovation of differing skills and mindsets in the context of the legislative reform being considered the greatest concern for faith based groups is the increasing ignorance and bigotry directed towards them.

¹ Tasmanian Law Reform Institute, *Sexual Orientation and Gender Identity Conversion Practices* (Issues Paper No 31, November 2020) (‘Issues Paper’) [1.3.21]

² Julia Black, Martyn Hopper and Christa Band, ‘Making a Success of Principles-Based Regulation’ (2007) 1(3) *Law and Financial Markets Review* 191, 197

³ *Ibid*, 198

In a stunning example of confused logic, the TLRI seeks to further justify this approach by:

- Accepting, without prior discussion or justification that “SOGI conversion practices”, presumably using the working definition proposed, are “often hidden from the general community”;
- Using this “hidden” nature to suggest that the “full range of practices” cannot be identified;
- Despite this lack of precise information claiming that “SOGI conversion practices” take many forms; and;
- Justifying restrictions on other fundamental human rights without any attempt to precisely identify the necessary balancing elements because of a lack of clarity of the actions affected.

The ‘principles-based approach’ adopted by the TLRI has resulted in an ideologically driven definition that provides the basis for wide ranging and draconian legislation.

Breadth of definition

The approach taken by the TLRI has also resulted in a **definition of extraordinary breadth and ambiguity**. Legal academics have made it clear that the very concept of ‘the rule of law’ requires that:

“[a]ll laws should be prospective, open and clear ... (the law’s) meaning must be clear. An ambiguous, vague, obscure or imprecise law is likely to mislead or confuse at least some of those who desire to be guided by it.”⁴

The Courts have agreed, with Lord Diplock, considering that ‘... [a]bsence of clarity is destructive of the rule of law; it is unfair to those who wish to preserve the rule of law; it encourages those who wish to undermine it’.⁵

The proposed definition goes well beyond treatments or practices covered under the other, limited, legislation already in place, to potentially include any act or even a mere statement. The potential scope is so broad as to be effectively meaningless – it could, in practice, include anything claimed to impact sexuality or gender.

Within the context of Christian school environment, allegations were made in a Senate Committee hearing in 2018 of “what amounted to conversion therapy” in relation to a child of a witness.⁶ These claims were subsequently comprehensively debunked.⁷ The HRLC Report authors also indicates that they “are concerned that staff at schools, particularly religious schools, may refer children to conversion practices” without providing any evidence either of this occurring or any clear indication

⁴J Raz ‘The Rule of Law and its Virtue’ (1977) 93 *Law Quarterly Review* 195, 198 quoted in Office of the Queensland Parliamentary Counsel, *Principles of good legislation: OQPC guide to FLPs - Clear Meaning* (14 February 2014) <https://www.legislation.qld.gov.au/file/Leg_Info_publications_FLP_Clear_meaning.pdf>.

⁵ *Merkur Island Shipping Corporation v Laughton* [1983] 2 AC 570, 612

⁶ Australian Senate, Legal and Constitutional Affairs References Committee, *Legislative exemptions that allow faith based educational institutions to discriminate against students, teachers and staff*, Monday, 19 November 2018, 9.

⁷ *Ibid*, 32.

of what is meant by ‘conversion practices’.⁸ Concerns by schools against this background would seem to be well founded.

While the prospects of successful litigation may remain uncertain on the basis of the vague definition, the effect will be stultifying as the potential for claims, themselves an effective punishment, cannot be avoided.

The **purported limitations in the definition are ineffectual** as limitations and impossible to understand with any precision. Even the narrower existing definitions in Queensland and ACT legislation are still so broad that they would preclude any treatment or practice relating to sexual orientation or gender identity. As a consequence, legislators were forced to take an ideological position, or “a claim, assertion or notion”, and explicitly exempt so called affirming treatment.⁹ Subsection (b) of the proposed definition ensures that the net is cast equally wide in the proposed definition: any act, or indeed statement, that is subsequently determined to be aimed at impacting gender or sexuality is captured.

While the TLRI claims to not have taken an ideological position or sought to address “ideology” in the definition, subsection (c) clearly does so. Subsection (c) clearly only includes in the acts or statements to be proscribed as a result of the definition those based on particular views on “non-conforming sexual orientation or gender identity”. The definition as proposed unequivocally **embeds in law contested theories and experimental treatment**.

Conflagration of distinct matters

The proposed definition covers both sexual orientation and gender identity, two distinct concepts defined in Tasmanian law as:¹⁰

***gender identity** means the gender-related identity, appearance or mannerisms or other gender-related characteristics of an individual including gender expression (whether by way of medical intervention or not), with or without regard to the individual's designated sex at birth, and may include being transgender or transsexual;*

***sexual orientation** includes –*

- (a) heterosexuality; and*
- (b) homosexuality; and*
- (c) bisexuality;*

As the American Psychological Association indicate sexual orientation relates to “a person’s sexual and emotional attraction to another person”,¹¹ as distinct from the sense of self involved in gender identity. They are **very distinct and largely unrelated concepts**. To sweep them together under the

⁸ Timothy W Jones et al, Preventing Harm, Promoting Justice: Responding to LGBT Conversion Therapy in Australia (Human Rights Law Centre, 2018) <<https://www.hrlc.org.au/reports/preventing-harm>>, 69 (‘HRLC Paper’).

⁹ *Public Health Act 2005* (QLD), s213F(3) and *Sexuality and Gender Identity Conversion Practices Act 2020* (ACT) s7(2).

¹⁰ *Anti-Discrimination Act 1998* (TAS), s3.

¹¹ American Psychological Association. (2015). Guidelines for Psychological Practice with Transgender and Gender Nonconforming People. *American Psychologist*, 70(9), 832-864.doi.org/10.1037/a0039906.

rubric of sexual orientation and gender identity conversion practices is an intellectually lazy tactic which forces a “one-size fits all” approach on distinct and often complex and nuanced issues.

The claims in relation to “conversion practices” related to sexual orientation, as discussed further below in response to Question 3, are dubious and highly contested. The application of these claims, without any evidential base, to responses to the exploration of gender identity is completely unwarranted. There is simply no detailed research on the long-term effects of practices which would be caught within the proposed definition of “conversion practices” applied to gender identity nor sufficient evidence of the efficacy of so called “gender affirming” practices.

Reduction in treatment pathways

The effect of the proposed working definition, if enacted in law, is to **proscribe a single treatment pathway** for those who are struggling with unwanted same-sex attraction or questioning their gender identity. Caring, evidence-based treatments would be made potentially unlawful with the result that they become less available and **those seeking care suffer**.

In 2019 a New Zealand Parliamentary Committee considered petitions to ban ‘conversion therapy’.¹² The Committee recognised the vital need to allow questioning and advice (emphasis added)–

‘It is important that anyone with questions about their sexuality or gender identity feels comfortable seeking advice. This may be from a professional counsellor, family and friends, or within their religious community.

A ban on conversion therapy should not prevent anyone from seeking or providing such advice.’

For schools, as they walk with emerging adults as establishing their own identity and developing personhood, this is essential. As educators who care for the wellbeing of our students, we know that childhood and adolescence can be a time of confusion and exploration. For generations young people have sought the advice of teachers and other staff in matters far beyond the subject matter of a classroom. Schools of all types, including faith-based schools, must be able to continue to have open and honest conversations with students in their care.

All jurisdictions across Australia, including Tasmania, are signatories to the Alice Springs (Mparntwe) Declaration,¹³ which asserts in its Preamble:

“Education plays a vital role in promoting the intellectual, physical, social, emotional, moral, spiritual and aesthetic development and wellbeing of young Australians, and in ensuring the nation’s ongoing economic prosperity and social cohesion.”

¹²New Zealand House of Representatives, Report of the Justice Committee: *Petition of Max Tweedie for Young Labour and the Young Greens: Ban Gay Conversion Therapy, Petition of Amanda Ashley: Ban Conversion Therapy in New Zealand*, October 2019, <https://www.parliament.nz/resource/en-NZ/SCR_92751/c6e6e71725e1e313965f8cf736f3813fd9bf9f06>.

¹³ Education Council, *Alice Springs (Mparntwe) Education Declaration* (December 2019) Education Council <[http://www.educationcouncil.edu.au/site/DefaultSite/filesystem/documents/Reports%20and%20publications/Publications/Alice%20Springs%20Declaration/Alice%20Springs%20\(Mparntwe\)%20Education%20Declaration%20\(accessible\).pdf](http://www.educationcouncil.edu.au/site/DefaultSite/filesystem/documents/Reports%20and%20publications/Publications/Alice%20Springs%20Declaration/Alice%20Springs%20(Mparntwe)%20Education%20Declaration%20(accessible).pdf)>.

We agree strongly that the education of the whole child is not complete unless it includes spiritual, moral, emotional and aesthetic development alongside the more commonly stated domains of intellectual, physical and social. This also includes areas of sexuality and identity. **Students must be able to seek advice from school staff about their sexuality or gender identity and school staff must be able to respond to those questions.** This is an essential component of all schools, including those within CSA and ASA.

Just last month in the United Kingdom, the High Court considered the issue of consent for puberty blocking treatment.¹⁴ The Court raised concerns about the **lack of investigation and research** into –

- The 2,496% increase in referrals in less than a decade,
- The significant change in the patient group, which is now predominately girls, and
- The significant proportion of those presenting who also have a diagnosis of Autistic Spectrum Disorder.

The Court went on to impose greater constraints on the use of puberty blockers, justifying this decision as follows:

“We express that view for these reasons. First, the clinical interventions involve significant, long-term and, in part, potentially irreversible long-term physical, and psychological consequences for young persons. The treatment involved is truly life changing, going as it does to the very heart of an individual’s identity. Secondly, at present, it is right to call the treatment experimental or innovative in the sense that there are currently limited studies/evidence of the efficacy or long-term effects of the treatment.

The effect of the proposed definition for “conversion practices”, if enacting in law, would be to **entrench this type of treatment as the only option available in Tasmania** – explicitly protected in law.

Keira Bell, the young woman at the heart of this case, said of the decision:¹⁵

“It was a judgment that will protect vulnerable young people. I wish that it had been made for me before I embarked on the devastating experiment of puberty blockers. My life would be very different today. ... My hope was that outside of the noise of the culture wars the court would shine a light on this harmful experiment on vulnerable children and young people. These drugs seriously harmed me in more ways than one and they have harmed many more particularly young girls and women.”

Once again, the proposed definition, if enshrined in law, would extinguish that hope in Tasmania.

There are increasing numbers of “Keiras” around the world, including within Australia. Some of their stories are available from Australian sources,¹⁶ but they are increasingly being documented around

¹⁴ *R (on the application of) Quincy Bell and A -v- Tavistock and Portman NHS Trust and others* [2020] EWHC 3274 (Admin). <<https://www.judiciary.uk/wp-content/uploads/2020/12/Bell-v-Tavistock-Judgment.pdf>> (*‘Quincy Bell’*).

¹⁵ ‘Puberty blockers: Under-16s ‘unlikely to be able to give informed consent’, *BBC Online* (online, at 6 January 2021) <<https://www.bbc.com/news/uk-england-cambridgeshire-55144148>>.

¹⁶ See, eg, ‘Former LGBT People In This Survey Share Their Video, Audio & Written Stories of Change’, *Stories of Change* (Web Page) <<https://www.freetochange.org/ex-lgbt-stories-of-change/>>.

the world.¹⁷ **This is a complex and multi-faceted issue – but the definition only allows a “one size fits all” solution.**

A recent article in the Sydney Morning Herald tells the experience of one mother and her daughter.¹⁸ The mother talks about the experience as “very troubling” with “a relentless motion towards permanent medical changes”.¹⁹

She describes the pressure of the process:

“Even worse, there is an enormous amount of pressure to agree, whether it’s repeatedly being told that your child is at very high risk of suicide, or an implication that, by not agreeing to their concepts around gender change, you are harming your child and suppressing their identity. This seems to be part of a new approach to gender distress, which I believe is highly ideological and far too simplistic.”²⁰

The proposed working definition is also **highly ideological and far too simplistic**. The definition takes an ideological position on issues relating to both sexual orientation and gender identity. Through its breadth of scope, it has the effect, if legislated, of imposing a simplistic ‘one size fits all’ treatment pathway.

An alternative, universally supported definition

As indicated above, we would actively support the introduction of legislation to clearly and unequivocally ban the abhorrent practices of the medical profession undertaken last century. A definition to support such a ban would be constructed to **target physically abusive or coercive practices aimed at altering sexual orientation** – which the precautionary principle suggests are ineffectual and potentially harmful on the basis of current evidence.

Other practices are claimed in the Issues Paper, [1.2.8], to be “reported in peer reviewed literature” with reference to only one publication in a peer reviewed journal.²¹ A perfunctory review of the publication reveals that the “research” on which the article was based reflected Google searches resulting in claims for which the authors of the “research paper” admitted “this paper is unable to ensure their accuracy”.²² The “research paper” also only references alleged practices in Australia in relation to the single unverified claim of aversion therapy in a psychiatric hospital during the late 1980s published in the controversial, and not peer reviewed, HRLC paper.

¹⁷ See, eg, Walt Heyer, *Trans Life Survivors* (2018) which “showcases emails from thirty or so people, selected from among hundreds who have written”, Abigail Shrier, *Irreversible Damage: The Transgender Craze Seducing Our Daughters* (Regenery Publishing, 2020), testimonies (unverified) on ‘Our Stories’ (Web Page) <<http://www.voicesofchange.net/our-stories.html>>.

¹⁸ Anonymous, ‘My child is transitioning gender, but I feel the system makes it too easy’ *Sydney Morning Herald*, (online, 13 December 2020), <<https://www.smh.com.au/national/my-child-is-transitioning-gender-but-i-feel-the-system-makes-it-too-easy-20201211-p56mqe.html>>.

¹⁹ Ibid

²⁰ Ibid

²¹ Djordje Alempijevic et al, ‘Statement on Conversion Therapy’ (2020) 72 *Journal of Forensic and Legal Medicine* 101930

²² International Rehabilitation Council for Torture Victims, *It’s Torture Not Therapy: A Global Overview Of Conversion Therapy: Practices, Perpetrators, And The Role Of States* (2020) research on conversion therapy, 5, <https://irct.org/uploads/media/IRCT_research_on_conversion_therapy.pdf>.

Certainly, any move to broaden the definition beyond that outlined above would be based more on ideology than evidence. It would have the effect of potentially limiting evidence-based care options and mandate a narrow single treatment pathway.

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

Apart from the physically abusive or coercive practices included in the definition we propose above, for which consent cannot reasonably be given, there is **no justification for changes to existing consent principles**. There are already well-established principles relating to the ability of adults and ‘mature minors’ to consent to treatment by registered health practitioners and for parents to be able to provide consent on behalf of minors.

We note the considerable examination of the issues of consent in relation to puberty blockers by the UK High Court mentioned above.²³ This uncontentious decision raised considerable concerns about the existing processes for consenting to so called “affirming” treatments and established clear boundaries for consent into the future. The requirements for consent for other, less physically invasive, treatment approaches should certainly be no more onerous or constrained than for these experimental “affirming” treatments.

Should the proposed extremely broad working definition be adopted consideration would need to be given to how schools can meet the requirements of the Australian Curriculum. The Health and Physical Education curriculum includes, for example, the following content descriptors:²⁴

- *“Describe physical and social changes that occur as children grow older and discuss how family and community acknowledge these” – Years 1 & 2*
- *“Explore strategies to manage physical, social and emotional change” – Years 3 & 4*
- *“Investigate resources and strategies to manage changes and transitions associated with puberty” – Years 5 & 6*

Within the context of Christian, and other faith-based schools, this content is delivered on the basis of the biological, and Biblical, view of sexuality and gender. Clearly this teaching would be “statements” and likely to not conform with the ideological position taking in sub-section (c) of the proposed definition. It therefore would become a question of potential litigation whether this teaching met the requirements of sub-section (b), certainly they may, prima facie, fall within the activities claimed to constitute “conversion practices” in the Issues Paper.²⁵

If the proposed working definition was to be adopted it would be essential that enrolment of children at faith-based schools constituted the necessary consent to the teaching of sexuality and gender in accordance with the doctrines, tenets and beliefs of the school.

²³ *Quincy Bell* (n 14).

²⁴ Australian Curriculum, Assessment and Reporting Authority [ACARA]. (2014). *Foundation to year 10 curriculum: Health and Physical Education* <<https://australiancurriculum.edu.au/f-10-curriculum/health-and-physical-education/>>.

²⁵ Issues Paper (n 1), [1.2.8].

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?

Once again it seems that unverified claims of “conversion practices” are being sought in an attempt to justify an ideological legislative agenda. This continues the pattern of reliance on weak and, in some cases extremely dubious, evidence being used to support legislative bans on “conversion practices”.

As the Issues Paper acknowledges, **there is no evidence indicating “conversion practices” are occurring in Tasmania.**²⁶ This is consistent with other jurisdictions in Australia. Indeed, during a Public Briefing in relation to a proposed ban in Queensland the representatives from Queensland Health were, **unable to provide any evidence** of ‘conversion therapy’ practices occurring within Queensland.²⁷

The Issues Paper then seeks to try and justify an estimate of prevalence from the controversial HRLC Paper, claiming that the Paper “estimated that up to 10 per cent of Australians may be exposed to some form of SOGI conversion practices”.²⁸ The HRLC Paper made no such claim, merely claiming on the basis of research on Australians “extremely or very active in practising their religion or worshipping as part of a group” that the data “suggest that up to 10% of Australians are actively involved in a religion that may potentially promote or practise conversion therapy”.²⁹ A more realistic estimate might be to apply the UK statistics referred to in the Issues Paper,³⁰ to estimates of the LGBT community in Tasmania.³¹ The results of around 220 people who may have undergone some form of “conversion practice” at some stage of their life, on a potentially very broad definition of the term, reflects around 0.04% of the Tasmanian population. This difference is reflective of many of the dubious claims around these issues.

In a similar vein the HRLC Report, heavily relied upon in the Issues Paper, makes claims about “the ‘welcoming but not affirming’ pastoral posture” it attributes to many “conservative religious communities”.³² An approach that would seem to be within the proposed working definition in the Issues Paper. These conclusions are largely drawn in the HRLC Report from cited research by Mark Jennings. Yet this research consists of interviews with a mere 20 people ‘who were encouraged by

²⁶ Issues Paper (n 1), [2.3.1].

²⁷ Queensland Parliament, Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee, *Public Briefing—Inquiry Into The Health Legislation Amendment Bill 2019*, Transcript of Proceedings Monday, 9 December 2019, 7.

²⁸ Issues Paper (n 1), [2.3.2].

²⁹ HRLC Paper (n 17), 16. This claim itself is highly speculative and without any solid evidence base.

³⁰ Government Equalities Office, *National LGBT Survey: Research Report* (2018) 83–94 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/721704/LGBT-survey-research-report.pdf, noting that the survey question merely asked “Have you ever had so-called “conversion” or “reparative” therapy in an attempt to “cure” you of being LGBT?” without any qualification or definition of these terms, leading to a potentially extremely broad definition.

³¹ Tom Wilson and Fiona Shalley, ‘Estimates of Australia’s non-heterosexual population’ (2018) 2(1) *Australian Population Studies* 26, 33.

³² HRLC Paper (n 17), 17.

peers to contact the author',³³ out of a total population where the largest denomination alone is reported by the author to have more than 280,000 members.³⁴ With a sample size of a mere 0.007% of a single denomination and the clear bias in the sampling, it is no surprise that the author indicates that the study "makes no claims to being representative of all LGBTIQ experiences".³⁵

Despite this, it is abundantly clear from the HRLC Report that any responses less than fully affirming of the sexual orientation or gender identity of LGBT individuals, regardless of the teachings of a religious body, are considered to be harmful 'conversion practices'. This approach is also followed in the Issues Paper in the construction of the proposed working definition.

This reliance on questionable 'evidence' is found elsewhere in the discussion in Part 2 of the Issues Paper. Despite "the difficulty of assessing the harm or benefits" of "conversion practices" acknowledged in the Issues Paper and research, the Issues Paper adopts an ideological position on the harm claimed to be associated with these vaguely defined practices. In doing so the Issues Paper minimises the impact of limitation in much of the evidence, promoting, for example, the validity of self reporting on the basis of very structured approaches in the drug development process, despite that lack of structure or definitions in self-reporting regarding "conversion practices".³⁶

In relation to children and adolescents the Issues Paper claims that a "study of young adults showed that exposure to SOGI conversion practices was associated with negative health outcomes".³⁷ The paper itself, however, records the "several limitations" of the study including:

- "study inclusion criteria called for current identification as LGBT; it is likely that this inclusion criterion excludes persons who are dissatisfied with their LGBT identity, or persons who had identified as LGBT during adolescence but not at the time of the study" – in other words, excluding those who may have benefited from the practices,³⁸
- "the design is retrospective, and thus causal claims cannot be made."³⁹

The study is also, as clearly spelt out in the heading, only related to "sexual orientation change efforts" and **does not deal with issues related to gender identity**.

³³ Mark Jennings, 'Impossible Subjects: LGBTI Experiences in Australian Pentecostal-Charismatic Churches', *Religions* 2018, 9(53): 1-15 (2).

³⁴ Mark Jennings, 'A Silence Like Thunder: Pastoral and Theological Responses of Australian Pentecostal-Charismatic Churches to LGBTQ Individuals' in Michael Wilkinson and Peter Althouse (eds), *Annual Review of the Sociology of Religion* Volume 8: Pentecostals and the Body (Leiden: Brill, 2017), 215-238 (218).

³⁵ Jennings (n 29), footnote 5

³⁶ See, e.g., Government Equalities Office (n 30) and the lack of definition and pejorative use of quotations in the question.

³⁷ Issues Paper (n 1), [2.2.10].

³⁸ Caitlin Ryan et al, 'Parent-Initiated Sexual Orientation Change Efforts With LGBT Adolescents: Implications for Young Adult Mental Health and Adjustment' (2020) 67(2) *Journal of Homosexuality* 159, DOI: 10.1080/00918369.2018.1538407, 11.

³⁹ *Ibid*, 12.

Other evidence cited in the Issues Paper to support claims of harm also only related to “sexual orientation change efforts” and do not provide any evidence related to gender identity and:

- Acknowledge limitations including potential selection bias, recall bias because of the “significant time gap” and the design only permitting arguments of “conversion therapy as a contributing, rather than casual, factor”;⁴⁰
- Recognise the potential impact of other factors, the potential non-representative nature of the sample, and the potential for negative outcomes to have preceded treatment.⁴¹

Rather than seek to engage constructively with papers supporting “conversion practices” the Issues Paper instead seeks to undermine one of the journals in which they have been published.⁴² Given the reports of threats against academics,⁴³ blocks placed on research in the area that might be ‘politically incorrect’,⁴⁴ and allegations of censorship by academic journals, including the University of Tasmania Law Journal,⁴⁵ seeking alternative sources for publication may not be surprising. It certainly should not mean that the evidence within them is not properly considered. There are a range of other issues and concerns raised in academic literature regarding so called affirming treatment in relation to gender identity which are also deserving of consideration if a balanced position is to be reached.⁴⁶

The Issues Paper then goes on to claim opposition to “SOGI Conversion practices” from peak medical bodies and other groups. Once again, however, the sources referenced, the Australian Medical Association and Australian Psychological Society, in their statements only refer to practices relating to sexual orientation and do not address the complex issues around gender identity.⁴⁷ Other professional

⁴⁰ Steven Meanley et al, ‘Lifetime Exposure to Conversion Therapy and Psychosocial Health Among Midlife and Older Adult Men Who Have Sex With Men’, ed Suzanne Meeks [2020] *The Gerontologist* gnaa069.

⁴¹ Travis Salway et al, ‘Prevalence of Exposure to Sexual Orientation Change Efforts and Associated Sociodemographic Characteristics and Psychosocial Health Outcomes among Canadian Sexual Minority Men’ (2020) 65(7) *The Canadian Journal of Psychiatry* 502, 505.

⁴² Issues Paper (n 1), [2.2.12].

⁴³ Camila Turner, ‘Revealed: The academics who need panic alarms or face death threats for their ‘radical’ views’ *The Telegraph* (online, 5 January 2021) <<https://www.telegraph.co.uk/news/2019/10/08/revealed-academics-need-panic-alarms-face-death-threats-radical/>>.

⁴⁴ ‘Bath Spa University ‘blocks transgender research’, *BBC News* (online, 5 January 2021) <<https://www.bbc.com/news/uk-41384473>>.

⁴⁵ Mathew Denholm, ‘University of Tasmania ‘censored’ paper on transgender laws, says academic’ *The Australian* (online 5 January 2021) <<https://www.theaustralian.com.au/higher-education/university-of-tasmania-censored-paper-on-transgender-laws-says-academic/news-story/dde78d78fcd752756f57333b>>.

⁴⁶ See, eg. Robert Withers, ‘Transgender medicalization and the attempt to evade psychological distress’ *Journal of Analytical Psychology*, 2020, 65, 5, 865–889 on concerns around the lack of consideration of other factors, Kirsty Entwistle, ‘Debate: Reality check – Detransitioners’ testimonies require us to rethink gender dysphoria’. *Child Adolesc Ment Health.*, 2020, <<https://doi.org/10.1111/camh.12380>> in relation to ‘detransitioners’ and Ken C. Pang et al, ‘Association of Media Coverage of Transgender and Gender Diverse Issues With Rates of Referral of Transgender Children and Adolescents to Specialist Gender Clinics in the UK and Australia, *JAMA network open*, 3(7), e2011161. <<https://doi.org/10.1001/jamanetworkopen.2020.11161>>, regarding ‘social contagion’ consideration.

⁴⁷ Australian Medical Association, ‘Sexual Diversity and Gender Identity: Position Statement’ (2002) [6.10] <https://ama.com.au/sites/default/files/documents/Sexual_Diversity_and_Gender_Identity.doc>, Australian Psychological Society, ‘APS Position Statement on the Use of Psychological Practices That Attempt to Change Sexual Orientation’ (2015) <<https://www.psychology.org.au/getmedia/95cfcca4-009c-4a75-a0e7->

bodies, such as the National Association of Practising Psychiatrists, have raised **serious concerns about proposed conversion therapy bans**.⁴⁸ Internationally some of the statements by professional bodies have also be subject to serious criticism for misrepresenting the conclusions of research cited to support their position.⁴⁹

The Issues Paper also places considerable weight on the claims made in the HRLC Paper,⁵⁰ and the SOGICE Survivor Statement.⁵¹ Neither reflect peer-reviewed research and neither contain independently verifiable claims, both are published by activists seeking to support conversion practices bans.

While suffering from many of the same flaws as these documents a 2020 Australian publication, on the basis of participation by nearly five times as many people as those interviewed for the HRLC Paper reflects a markedly different experience.⁵² Amongst the very different results is a marked reduction in suicidal ideation by those who have received treatment to deal with unwanted same sex attraction or gender identity issues (emphasis added) –

*“It is of fundamental importance to note from the statistics of this study that being able to change their sexual orientation or gender identity has potentially saved many of these participants’ lives. 75% of participants had a notable **average baseline reduction in suicidal ideation of 40%.**”*

A larger sample again completed an online survey, sharing again the concerns of other research about methodological validity, reporting overwhelming positive impacts of ‘detransitioning’.⁵³ Support for people wanting to take these pathways being effectively eliminated if a ban on the basis of the proposed working definition is adopted.

There are clearly significant limitations in the research in this area, and claims of ‘settled’ evidence are simply not correct. **This is a complex and multi-faceted issue – in particular regarding issues of gender identity.** It is highly doubtful that any further unverified claims of “conversion practices” received in relation to this question can change this situation. The TLRI should acknowledge the limitations of the available evidence and adopt the universally accepted definition proposed above rather than its currently ideologically driven approach.

597d68e5a55c/Position_statement_on_psychological_practices_that_attempt_to_change_sexual_orientation_members.pdf>.

⁴⁸ National Association of Practising Psychiatrists, ‘Conversion Therapies Legislation for Gender Dysphoria’ <<https://napp.org.au/2020/08/conversion-therapies-legislation-for-gender-dysphoria/>>.

⁴⁹ See, eg, James M. Cantor, ‘American Academy of Pediatrics and trans-kids: Fact-checking Rafferty (2018) <http://www.jamescantor.org/uploads/6/2/9/3/62939641/cantor_fact-check_of_aap.pdf>.

⁵⁰ HRLC Paper (n 17).

⁵¹ Sexual Orientation and Gender Identity Change Efforts Survivors (‘SOGICE Survivors’), *SOGICE Survivor Statement* (July 2020) <<http://socesurvivors.com.au/wp-content/uploads/2020/07/SOGICE-Survivor-Statement-v4-July-2020.pdf>>.

⁵² Free to Change, ‘SURVEY OF EX-LGBT PEOPLES: Does "Conversion Therapy" (Counselling) Constitute Harm or Help’ (2020), <<https://www.freetochange.org/wp-content/uploads/Free-To-Change-2020-Conversion-Therapy-Report-V4C.pdf>>.

⁵³ Cari Stella ‘Female detransition and reidentification: Survey results and interpretation’, (2016) <<https://guideonragingstars.tumblr.com/post/149877706175/female-detransition-and-reidentification-survey>>.

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)?

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?

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?

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 what way?

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

It is **impossible to answer these questions sensibly in the absence of a definition of the “SOGI conversion practices” being addressed.**

If a definition along the lines we propose above, targeting physically abusive or coercive practices aimed at altering sexual orientation, is adopted we believe there would be universal support for addressing any gaps in criminal law, health practitioner regulation, or other appropriate law that allow such practices to continue.

Alternatively, if the broader definition proposed by the TLRI was adopted we would **strongly oppose** any legislative change which did not:

- ensure quality medical care can continue,
- protect loving families from government interference, and
- safeguard vital democratic freedoms.

We note, once again, the **ideological position** that the TLRI has taken in claiming that “the current law is not appropriately directed and tailored” to deal with “conversion practices”.⁵⁴ This is “suggested” the TLRI claims because there is “[n]o statement that practices are contrary to community interests” and “[n]o declaratory statement that practices are wrong”,⁵⁵ yet at indicated in response to Question 3 above, there are a range of evidence based views, held by experts, on these questions, particularly as it would impact those struggling in relation to gender identity.

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

We note that the Issues Paper has dealt only very superficially with the impact of any proposed legislative change on human rights issues, in particular religious freedom and freedom of conscience

⁵⁴ Issues Paper (n 1), [3.3.20]

⁵⁵ Ibid.

and expression. This is not unexpected given that no consideration of other human rights is the Terms of Reference accepted.⁵⁶

On behalf of the parents who choose a faith-based education, and the church and faith communities that deliver it, schools represented in this submission are overt and particular about the beliefs and values that underpin curriculum, culture and practice. This includes orthodox Christian teaching on personhood, identity and sexuality.

The clearest expression of the protections afforded religious freedom is undoubtedly Article 18 of the International Covenant on Civil and Political Rights (ICCPR).⁵⁷ The United National Human Rights Committee has provided additional interpretative guidance on Article 18 in its General Comment 22.⁵⁸ As noted in the Andrews Committee interim report,⁵⁹ looking at religious freedom in Australia, this General Comment gives the freedom a 'broad scope' and reinforces the 'fundamental' nature of the right.

Importantly, both Article 18 itself and the General Comment recognise the right to 'manifest' religion in 'worship, observance, practice and teaching' including 'in community with others'.⁶⁰ In a complex contemporary society this is often done 'in community with others' through a variety of means, including corporate structures. Christian and Adventist schools, for example, are required to be incorporated by funding legislation,⁶¹ but are no less a communal expression of faith. The importance of the community element of the protections have been recognised by the European Court of Human Rights commenting that they lay 'at the very heart of the protection' of religious freedom.⁶²

A number of other international instruments explicitly include recognition of the right to establish faith based schools.⁶³ This builds on the rights of parents recognised in the ICCPR to 'ensure the religious and moral education of their children in conformity with their own convictions'.⁶⁴ Similar rights are also recognised in the *Convention on the Rights of the Child* (CROC) to which Australia is also a signatory.⁶⁵

⁵⁶ *Ibid*, xi

⁵⁷ *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, UNTS171 (entered into force 23 March 1976) ('the ICCPR').

⁵⁸ UN Human Rights Committee, *General Comment No. 22: The Right to Freedom of Thought, Conscience and Religion (Article 18)*, 48th sess, UN Doc CCPR/C/21/Rev.1/Add.4 (27 September 1993) ('General Comment 22').

⁵⁹ Joint Standing Committee on Foreign Affairs, Defence and Trade, *Interim Report, Legal Foundations of Religious Freedom in Australia* (2017) ('Andrews Committee interim report')

⁶⁰ ICCPR Article 18(1)

⁶¹ See, e.g., *Australian Education Act 2013* (Cth) s75(2).

⁶² *Hasan and Chaush v Bulgaria*, App No 30985/96, (2002) 34 EHRR 55, [62] quoted in Andrews Committee interim report [3.31].

⁶³ See, e.g., *Declaration on the Elimination of all Forms of Intolerance and Discrimination based on Religion or Belief* Article 5, *Convention against Discrimination in Education* Article 5(b) in Appendix One.

⁶⁴ ICCPR Article 18(4).

⁶⁵ *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990). Australia ratified the Convention on 17 December 1990.

It would be a **grave infringement of these fundamental rights** if any ban of 'conversion practices' had the result, directly or indirectly, of impacting what is taught within a Christian, Adventist or other faith-based school.

We respectfully suggest that to attempt to develop sensible proposals for legislative reform without prior agreement on a definition of what is being addressed and then a rigorous assessment of the impact on other human rights is fundamentally flawed.

We are calling on the TLRI to:

1. **Suspend** any proposals to develop proposals for legislative reform,
2. Focus on determining a **clear, evidence based and commonly acceptable definition** of the practices to be addressed, and
3. Once such a definition is determined engage in **further consultation** regarding possible legislative responses including full and detailed consideration of the impacts on other human rights.