Conversion Practices Issues Paper

Submission from Freedom for Faith

January 2021

About Freedom for Faith

Freedom for Faith is a Christian legal think tank that exists to see religious freedom protected and promoted in Australia and beyond.

It is led by people drawn from a range of denominational churches including the Australian Christian Churches, Australian Baptist Churches, the Presbyterian Church of Australia, the Seventh-Day Adventist Church in Australia, and the Anglican Church Diocese of Sydney. It has strong links with, and works co-operatively with, a range of other Churches and Christian organisations in Australia.

1. Preliminary observations

The Issues Paper notes that a few jurisdictions around the western world have introduced legislation of this kind or are considering it. Almost invariably, the legislation recognises the freedom of adults to make their own decisions and only prohibits non-consensual treatment for those over 18. The Australian laws passed or proposed so far, prohibit adults from exercising the freedom to seek the help they consider they want and need.

Another feature of the legislation in these jurisdictions is that it is premised on a history of harm to some same-sex attracted people from treatment practices that have long since been discontinued. However, the legislation applies also to gender identity, notwithstanding that no similar case has been made out for banning therapies that assist a person to be more comfortable in their natal sex or to explore the reasons why they may be experiencing gender dysphoria.

While this submission is primarily focused upon religious freedom issues, we draw the attention of the TLRI to the position paper of the National Association of Practising Psychiatrists in

Australia,[1] and the guidance provided by the Royal College of Psychiatrists.[2] While the latter criticises conversion therapies, it also notes that there is little or no evidence that there have been unethical practices in relation to treatment for those who identify as transgender (p.4). It also refers to "the need for better evidence on the outcomes of pre-pubertal children who present as transgender or gender-diverse." The position statement continues:

> Until that evidence is available, the College believes that a watch and wait policy, which does not place any pressure on children to live or behave in accordance with their sex assigned at birth or to move rapidly to gender transition, may be an appropriate course of action when young people first present."

The evidence is that where a watch and wait policy is adopted, most children (around 85% according to a review article) resolve their gender dysphoric feelings around or after puberty.[3] The approach adopted in the Australian legislation to date is inconsistent with the practices recommended by psychiatrists, inasmuch as it creates a chilling effect on providing therapy while supporting affirmation approaches that have gender transition as their end point.

Since the Royal College's position statement was developed, there has been growing debate in England about how best to support children and young people who identify with a gender that is incongruent with their natal sex. The High Court in England, in *Bell v Tavistock and Portman NHS Foundation Trust*[4] has recently intervened to impose significant restrictions on the prescription of puberty blockers (and, a fortiori, cross-sex hormones) to young people under 18, recognising the risks of such treatment and uncertainties about long-term benefits and detriments. This reflects the growing professional concern about the affirmation approach which is so strongly promoted by transgender advocacy organisations and some, but by no means all, clinicians working in this area.

There seems to be a widespread acceptance that many of those now presenting at gender clinics with gender dysphoria have a range of mental health problems other than those attributable to minority stress. It would be tragic if the law were to be amended in Tasmania in a way which deters mental health professionals from providing appropriate treatment to children and young people who may be uncertain about their gender identity, when the medical profession and bodies concerned with health regulation are now drawing back from the gender affirmation approach.

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[1] Management of gender dysphoria. National Association of Practising Psychiatrists 2020. https://napp.org.au/2020/11/management-of-gender-dysphoria/.

[2] Supporting transgender and gender-diverse people: PS02/18. Royal College of Psychiatrists 2018. https://www.rcpsych.ac.uk/pdf/PS02_18.pdf

[3] J. Ristori and T. Steensma, 'Gender Dysphoria in Childhood' (2016) 28 *International Review of Psychiatry* 13 at 15.

[4] [2020] EWHC 3274 (Admin).

2. Introducing new criminal offences

To justify legislation of this kind, there must be clear and convincing evidence that there is a problem in the jurisdiction that needs to be addressed through the blunt and draconian means of introducing a criminal offence.

The legislation in Queensland and the ACT, and in Bill form in Victoria, have all the characteristics of 'copycat' legislation. That is, without any clear indication that there is a present problem that needs to be addressed, there is pressure from advocacy groups for far-reaching legislation that is justified because other jurisdictions have introduced it. That seems to be the rationale that the TLRI has offered. It offers no evidence that any of the long-discontinued practices concerning same-sex attraction that have caused harm in the past are currently practiced in Tasmania.

The Human Rights Law Centre report makes the claim that "religious conversion therapy and related practices are pervasive in many faith communities in Australia and causing real harm to lesbian, gay, bisexual and trans people".[5] However, this research has been criticised for being based upon such a small sample of people whose experiences of harmful practices may date from a long time ago. While we can all respect people's lived experience, these alone cannot be the basis for draconian legislation (of the kind proposed in Victoria) that impacts upon the rights and freedoms of others who may have different stories to tell. In this regard, we note the lived experience of a much larger number of people responding to an Australian survey who say that they have been helped by the kinds of support that others seek to ban.[6] The report on the responses of these 70 respondents challenges the generalisability of the Human Rights Law Centre report findings.

3. Prevalence

We note with concern that the TLRI quotes with apparent approval the claim by the Human Rights Law Centre that up to 10% of the Australian population may be exposed to conversion practices. This is to a significant extent based on the proportion of Australians identifying themselves as 'extremely or very active' in their religion (TLRI paper pp.21-22). Footnote 70 illuminates the basis on which this extraordinary claim is based:

> Twenty per cent of Australians across all religious beliefs identify themselves as 'extremely or very active' in their religious organisation. The Centre removed from this figure approximately 50 per cent of Catholics (who, according to the authors, are less likely to be exposed to conversion practices because of apparent Catholic rejections of the practice) leaving Protestant and Evangelical Christians, Hindus, Muslims, Buddhists and Jews as potentially exposed. The HRLC noted that not all denominations within these broad religious groups did endorse or were likely to

[5] https://www.latrobe.edu.au/news/articles/2018/release/report-on-lgbt-conversion-therapy-harms. The report is: 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>

[6] Report at https://www.freetochange.org/wp-content/uploads/Free-To-Change-2020-Conversion-Therapy-Report-V4E.pdf

> engage in conversion practices, 'conservative congregations statistically have vastly higher rates of active participation than more liberal congregations'.

The authors evidently make certain unresearched generalisations about different faith communities, assume that about 50% of those who are 'extremely or very active' in their religion belong to congregations or communities that engage in 'conversion practices' and then treat the 97% or so of those in these congregations who *do not* have a same-sex orientation or gender incongruence as 'exposed to' conversion practices. This claim can only be based upon an assumption that any faith group that does not approve of homosexual conduct or relationships is likely to engage in conversion practices (while acknowledging this may not be true of some Catholics).

However, this offensive claim, which seems to reflect the authors' strong hostility to people of faith, provides the basis for the TLRI's assumption that some faith communities in Tasmania engage in these practices:

> [I]t is probable that some Australian churches do engage in SOGI conversion practices. Advertisement and arrangement of SOGI conversion practices usually takes place informally and within religious groups. To the TLRI's knowledge, SOGI conversion practices are rarely advertised or provided on a fee for service basis. The general prevalence of these practices within Australia suggests that they may be taking place in Tasmania given the general ubiquity in faith adherence and practices across the country.

It is reasonable of course, for the TLRI to ask for submissions on whether in fact conversion practices are occurring in Tasmania, which is an empirical question; but the text can be summarised as saying: 'Conversion practices are very widespread in faith groups across Australia, affecting up to 10% of the population; Tasmania is similar in its faith adherence to the nation as a whole; therefore it can be expected that there is a similar prevalence in Tasmania.' This is the thrust of the message, even though the Issues Paper merely states it 'may' be happening in Tasmania.

The question is not asked neutrally. Respondents are asked a leading question. In analysing responses, it will be important to go beyond a mere assertion that someone experienced a conversion practice, to discern what the writer means by this, how long ago it occurred, and whether there is any evidence it is still occurring.

4. Definition

It is important to define with precision what therapies (if they are still practised) are shown by rigorous research evidence to be so harmful that they justify criminalisation. The need for specificity in this area is a fundamental requirement of legislative drafting. People need to know exactly what is prohibited so that they can avoid breaching the law.

Tasmania, like the rest of Australia, is a multicultural society. In particular, Tasmania has welcomed many recent refugees and migrants who come from parts of the world where there are very traditional values about sex and family life.

If the definition is so broad as to treat a 'statement' that aims to suppress the sexual orientation or gender identity of a person as unlawful (see proposed definition, p.13), then a range of questions arise. If a church teaches that those who have a same-sex orientation should see celibacy as an option, is that a statement that aims to 'suppress' a person's sexual orientation? If a religious leader teaches that there are only two genders, male and female, and criticises the relatively new movement to claim there are multiple genders, would these constitute unlawful statements under the TLRI's proposals?

If the definition (if legislation is proposed) is not very narrowly drawn, there is a risk of serious conflict between people of faith and the government, with consequent detrimental impacts for the harmony of our diverse multicultural society.

5. Fluidity

Is gender fluid? Many people think so, including leaders of the LGBTIQA+ movement. Reflecting a widely held view amongst gender theorists, Hidalgo and colleagues, who are clinicians at four specialist gender identity clinics in the United States, express the view that "gender may be fluid, and is not binary, both at a particular time and if and when it changes within an individual across time."[7]

The TLRI, echoing the advocacy groups who are promoting this legislation, appears to assume that gender identity is fixed and cannot be changed. Yet many 'progressive' advocates and gender theorists, strongly supportive of the LGBT+ communities, believe the opposite. Some argue that gender is socially constructed. If so, it can be changed by approaches to assist people to change their socially constructed identity.

As noted above, the overwhelming evidence is that children who are gender dysphoric are very likely to resolve these issues by the time of puberty, with most developing a same-sex orientation.

What is less appreciated is the level of fluidity in relation to sexual orientation amongst young people. Numerous large research studies indicate this.[8] The assumption that sexual orientation is innate, fixed and unchangeable underlies the proposed legislation, but is an unscientific claim to the extent that it ignores this fluidity for adolescents who are still on the journey towards mature

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[7] M. Hidalgo and others, 'The Gender Affirmative Model: What we Know and What We Aim to Learn' (2013) 56 *Human Development* 285.

[8] Hu, Y., Xu, Y. & Tornello, S. (2016). Stability of self-reported same-sex and both-sex attraction from adolescence to young adulthood. *Archives of Sexual Behavior, 45,* 651-59; Katz-Wise, S., (2015). Sexual fluidity in young adult women and men: associations with sexual orientation and sexual identity development. *Psychology & Sexuality,* 6, 189-208; Ott, M., Corliss H., Wypij D, Rosario M, & Austin S. (2011). Stability and change in self-reported sexual orientation identity in young people: application of mobility metrics. *Archives of Sexual Behavior* 40, 519-32; Savin-Williams, R. & Ream, G. (2007). Prevalence and stability of sexual orientation components during adolescence and young adulthood. *Archives of Sexual Behavior,* 36, 385-94; Savin-Williams, R., Joyner, K. & Rieger, G. (2012). Prevalence and stability of self-reported sexual orientation identity during young adulthood. *Archives of Sexual Behavior* 41, 103-10.

psychosexual development. Only some of them will go on to have a fixed same-sex orientation in adult life.

6. Bisexuality

One of the puzzles about the proposed new laws to ban so-called conversion therapy is that the underlying premise doesn't seem to fit well with the long-standing experience and evidence that many people are, to a greater or lesser extent, bisexual. An Australian study found that 9% of men and 19% of women had at some stage experienced some same-sex attraction or experience; but a very much smaller number identified themselves as being gay or lesbian. Conversely, some who did identify as gay or lesbian had heterosexual experiences.[9] Data from the U.S. National Survey of Family Growth indicates that women aged 18-44 are three times as likely as men to report any same-sex contact, with over 17% reporting that contact compared with 6% of men. Most of these women would identify as heterosexual.[10]

So the question must be asked, is there anything wrong with a person seeking help, including, for example, prayer, to address a same-sex attraction when their beliefs, values and aspirations greatly dispose them to want to form a stable and happy marriage with a person of the opposite sex?

These are amongst the many issues to which, it seems, the TLRI has yet to give thought. We trust that the medical and social science literature cited will assist it to reconsider many of the propositions it advanced in an Issues Paper which seems to have been heavily influenced by LGBT+ advocacy groups.

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[9] Richters, J., Altman D., Badcock P., Smith A., de Visser R., Grulich A. Rissel C, & Simpson J., (2014). Sexual identity, sexual attraction and sexual experience: The Second Australian Study of Health and Relationships. *Sexual Health* 11, 451-60. See also, in the US context, Twenge, J., Sherman, R. & Wells, B. (2016). Changes in American adults' reported same-sex sexual experiences and attitudes, 1973–2014. *Archives of Sexual Behavior,* 45*,* 1713-30.

[10] Copen, C., Chandra, A. & Febo-Vazquez, I. (2016). *Sexual Behavior, Sexual Attraction, and Sexual Orientation Among Adults Aged 18–44 in the United States: Data From the 2011–2013 National Survey of Family Growth*. National Health Statistics Reports, 88. Hyattsville, MD: National Center for Health Statistics.