

COMMUNITY LEGAL CENTRES TASMANIA

26 February 2024

Department of Justice
Office of the Secretary
GPO Box 825
Hobart TAS 7001
attn: Secretary

via email: haveyoursay@justice.tas.gov.au

To the Department of Justice,
Re: Justice Miscellaneous (Conversion Practices) Bill 2024

Community Legal Centres Tasmania (CLC Tas) welcomes the opportunity to provide comment on the *Justice Miscellaneous (Conversion Practices) Bill 2024* ('the Bill').¹ We welcome the Government's commitment to give statutory recognition to the serious harm caused by conversion practices. Eliminating conversion practices will provide better protection of the LGBTIQ+ community by affirming that all sexual orientations or gender identities are valued. However, in our opinion the draft Bill has a number of deficiencies that should be addressed before the Bill is tabled in Parliament.

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.

Conversion practices in Australia

It is clear that conversion practices continue to take place as the Tasmania Law Reform Institute (TLRI) observed:²

...conversion practices continue, albeit on the fringes of the health profession as a form of medical malpractice, or now, more commonly, as a form of pseudoscientific or pseudo medical practice outside the clinical space. That may involve individual or group 'therapy', 'treatment', 'healing', 'counselling', 'mentoring' or other forms of 'study' programs.

¹ CLC Tas would like to acknowledge those persons and organisations who gave freely of their time in assisting with our submission.

² Tasmania Law Reform Institute, *Sexual Orientation and Gender Identity Conversion Practices* at iii.

In 2021 a report found that 5 per cent of LGBTIQ+ Tasmanians surveyed had undergone conversion practices to change their sexual orientation or gender identity and that 97 per cent of those surveyed had been told that their identity was the result of abuse or trauma or that that they needed to be 'fixed'.³ Finally, it is worth noting that of the 182 submissions accepted by the TLRI as part of its report *Sexual Orientation and Gender Identity Conversion Practices*, one in four "reported people being offered or undergoing conversion practices in Tasmania... [including] some submissions from Tasmanian organisations and individuals stated or implied that they engage in these practices".⁴

In August 2020, Queensland became the first jurisdiction in Australia to ban conversion practices.⁵ This was followed by the Australian Capital Territory and Victoria.⁶ Recently, the New South Wales Government also committed to ban conversion practices.⁷

Conversion Practices Definition

Conversion practices include attempts to change, eradicate or suppress a person's sexual orientation or gender identity by a number of methods including by encouraging persons to believe being lesbian, gay, bisexual, transgender or intersex is a defect or disorder and/or using shame or coercion to give the person an aversion to same-sex attractions and to encourage 'gender-conforming' behaviour. In our opinion, the definition of "conversion practice" in the Bill is too narrowly defined, as practices that seek to "change or eradicate the sexual orientation or gender identity". We strongly recommend that the definition is broadened to include the word 'suppress' so that it reads "change, eradicate or suppress" as has been adopted in Victoria and Queensland.⁸

As well, as the Bill currently stands, conversion practices do not include practices that 'assist' or 'support' a person undergoing or considering a gender transition or to express their gender identity. The failure to contextualise these terms means that the assistance or support provided could be to dissuade a person's undertaking of gender transition or to express their gender identity. We recommend a statement of positive support at the commencement of section 28(3) would better explain how 'assist' and 'support' is to be read:

(3) For the purposes of this Division, conversion practice does not include practices supportive of or affirming a person's gender identity or sexual

³ Angela Dwyer, Ruby Grant, Ron Mason and Ash Barnes, *Just listen properly, like with intent: LGBTIQ+ Tasmanians: Telling us the story* (Final Report, December 2021) at 75.

⁴ Tasmania Law Reform Institute, *Sexual Orientation and Gender Identity Conversion Practices* at iii.

⁵ Chapter 5B of the *Public Health Act 2005* (Qld).

⁶ *Sexuality and Gender Identity Conversion Practices Act 2020* (ACT); *Change or Suppression (Conversion) Practices Prohibition Act 2021* (Vic).

⁷ Jessica Kidd, 'Bipartisan support pledged in NSW to ban gay conversion practices', *Australian Broadcasting Corporation*, 17 February 2023. As found at <https://www.abc.net.au/news/2023-02-17/nsw-bipartisan-support-in-for-gay-conversion-ban/101988632> (accessed 19 January 2024).

⁸ Section 5(1)(b) of the *Change or Suppression (Conversion) Practices Prohibition Act 2021* (Vic); Section 213F of the *Public Health Act 2005* (Qld).

orientation including, but not limited to, a practice or conduct for the purposes of—

(a) assisting a person who is undergoing a gender transition;

(b) assisting a person who is considering undergoing a gender transition;

(c) assisting a person to express the person's gender identity;

(d) providing acceptance, support or understanding of a person;

(e) facilitating a person's coping skills, development or identity exploration, or facilitating social support for the person.

Indirect conversion practices not addressed in Bill

The most significant criticism of the Bill is its narrow focus on stamping out conversion practices through the criminal law. As the TLRI itself noted, criminal measures "should be a backstop measure of last resort".⁹ In our opinion, the criminal law in isolation is unlikely to result in societal change, particularly when conversion practices are hidden and where social stigma or other risks may dissuade or prevent members from raising a complaint. A better model would see criminal sanctions imposed for repeated or reckless direct conversion practices and a civil response scheme introduced for indirect conversion practices.¹⁰

Equal Opportunity Tasmania and the Anti-Discrimination Act 1998 (Tas)

The TLRI noted that indirect conversion practices are "most appropriately described and regulated as discriminatory conduct".¹¹ We strongly agree with the TLRI that the Anti-Discrimination Commissioner and Equal Opportunity Tasmania should be provided with the power to investigate indirect conversion practices as well as assured appropriate resourcing to educate the public about indirect conversion practices. This role would be consistent with its role educating about discrimination. A model that should be adopted is found in Victoria where the Victorian Equal Opportunity and Human Rights Commission has the resources to develop educative materials about conversion practices and its harmful impacts, undertake investigations and impose civil penalties whilst also allowing the police to prosecute more serious offences.

We also note that none of the amendments recommended by the TLRI for inclusion in the *Anti-Discrimination Act 1998* (Tas) are included in the draft Bill. These amendments included section 19 to clarify that a public act promoting conversion practices amounts to incitement of hatred towards, serious contempt for or severe ridicule of another person or group of persons on the grounds of sexual orientation

⁹ Tasmania Law Reform Institute, *Sexual Orientation and Gender Identity Conversion Practices* (Final Report No. 32) at 116.

¹⁰ Tasmania Law Reform Institute, *Sexual Orientation and Gender Identity Conversion Practices* (Final Report No. 32).

¹¹ Tasmania Law Reform Institute, *Sexual Orientation and Gender Identity Conversion Practices* (Final Report No. 32) at 142.

and/or gender identity;¹² and providing the Anti-Discrimination Commissioner and Health Complaints Commissioner with the discretionary power to cooperate and coordinate with other state offices in investigations into alleged conversion practices.¹³

Consent

Both the Australian Medical Association and the Australian Psychological Society oppose conversion practices on the basis that they are ineffective and harmful.¹⁴ Expressed in another way, sexual orientation and gender identity are not disorders, diseases, illnesses, deficiencies or disabilities. It is therefore puzzling that the draft Bill will continue to allow conversion practices to be carried out in circumstances where an adult consents and understands that it could cause physical or mental harm. We strongly agree with Rodney Croome AM that the Bill should remove consent as a defence because “it is impossible to consent to a ‘treatment’ that doesn’t work for a ‘condition’ that doesn’t exist”.¹⁵ We recommend adoption of the Victorian model where no consent can be given to the carrying out of conversion practices.¹⁶

Health Services providers

As the Bill currently stands, conversion practices are able to be carried out by ‘health service providers’. Pursuant to the *Health Complaints Act 1995* (Tas) a health service provider is defined broadly to include a person “who holds himself, herself or itself out as being able to provide a health service”.¹⁷ A ‘health service’ is defined to include “any service provided by a provider for, or purportedly for, the care or treatment of another person”.¹⁸ These broad definitions mean that anyone carrying out or seeking to carry out conversion practices is capable of being defined as a health service provider providing a health service. The Bill’s broad definition can be contrasted with Victoria which requires that a ‘health service provider’ be compliant with the Health Practitioner Regulation National Law.¹⁹ We strongly believe that the purpose of the Bill, namely to “prevent harms caused by practices that attempt to change or eradicate a person’s sexual orientation or gender identity” cannot be met without limiting the assessment or treatment of another person’s gender identity or expression to appropriately trained clinicians. We therefore recommend that the Bill adopt the Victorian model noted above.²⁰

¹² Tasmania Law Reform Institute, *Sexual Orientation and Gender Identity Conversion Practices* (Final Report No. 32) Recommendation 10 at 157.

¹³ Tasmania Law Reform Institute, *Sexual Orientation and Gender Identity Conversion Practices* (Final Report No. 32) Recommendation 11 and paragraph 7.3.15 at 158.

¹⁴ Australian Medical Association, LGBTQIA+ Health Position Statement; Australian Psychological Society, Use of Psychological Practices that attempt to change or suppress a person’s sexual orientation or gender: Position statement.

¹⁵ Equality Tasmania, ‘Concern Conversion Bill will allow practices to continue’, 13 December 2023. As found at <https://equalitytasmania.org.au/concern-conversion-bill-will-allow-practices-to-continue/> (accessed 19 January 2024).

¹⁶ Section 5 of the *Change or Suppression (Conversion) Practices Prohibition Act 2021* (Vic).

¹⁷ Section 3(a)-(b) of the *Health Complaints Act 1995* (Tas).

¹⁸ Schedule 1 Part 1 clause 8 of the *Health Complaints Act 1995* (Tas).

¹⁹ Section 4 of the *Change or Suppression (Conversion) Practices Prohibition Act 2021* (Vic).

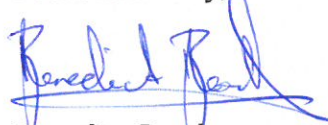
²⁰ Tasmania Law Reform Institute, *Sexual Orientation and Gender Identity Conversion Practices* (Final Report No. 32), Recommendation 4 at 129.

Mental Health Act 2013 (Tas)

The TLRI recommended that the *Mental Health Act 2013* (Tas) expressly clarify that a person is not to be taken to have a mental illness by reason only of that person's gender identity or expression.²¹ This recommendation has already been implemented with the passing of the *Mental Health Amendment Bill 2022* (Tas) and brings Tasmania into line with most Australian States and Territories.²² However, the TLRI also recommended the inclusion of a provision that a person must not purport to or actually undertake an assessment or treatment of another person's sexual orientation unless an appropriately trained clinician.²³ We strongly recommend that the Bill be amended to include this provision.

If we can be of any further assistance, please do not hesitate to contact us.

Yours faithfully,



Benedict Bartl
Policy Officer

Community Legal Centres Tasmania

²¹ Tasmania Law Reform Institute, *Sexual Orientation and Gender Identity Conversion Practices* (Final Report No. 32), recommendation 3 at 128.

²² See section 4(2)(d)(i)-(ii) of the *Mental Health Act 2013* (Tas). Also see section 35D(5)(l) of the *Guardianship and Administration Act 1995* (Tas). In other jurisdictions see section 16(1)(d) of the *Mental Health Act 2007* (NSW); section 4(2)(d) of the *Mental Health and Wellbeing Act 2022* (Vic); section 10(2)(d) of the *Mental Health Act 2016* (Qld); section 6(2)(e) of the *Mental Health Act 2014* (WA); schedule 1(d) of the *Mental Health Act 2009* (SA) and; section 11(d) of the *Mental Health Act 2015* (ACT).

²³ Tasmania Law Reform Institute, *Sexual Orientation and Gender Identity Conversion Practices* (Final Report No. 32), Recommendation 2 at 126.