



Women's Health Tasmania

Response to the TLRI Issues
Paper No 31: Sexual
Orientation and Gender
Identity Conversion Practices

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1. About Women's Health Tasmania

Women's Health Tasmania (WHT) is a universal service, available to all women in Tasmania. It is a health promotion charity funded by the Tasmanian Department of Health, and its work is guided by the World Health Organisation's definition of health – "Health is a state of complete physical, mental and social well-being, not merely the absence of disease or infirmity"¹. Its work is focussed on increasing the range of services to women vulnerable to inequitable health outcomes due to social or economic determinants. WHT acknowledges the impact of societal influences such as income, education, gender, sexual orientation, ethnicity, disability, and isolation on health outcomes, and seeks to reduce the negative effects of these factors on individual women.

WHT provides a safe, supportive environment for women. In doing so it adopts an inclusive definition of women, embracing diverse understandings of sex, gender, and sexuality.

Since its formation 31 years ago WHT has played an important role in health promotion work among people in the LGBTIQ+ community who identify as women. WHT adopts an inclusive definition of 'women', to include not just cis-gendered women but also people with diverse sex characteristics who identify as women and trans women. In practical terms this mean we also provide services to people in that community who do not identify as women but who have health needs related to women's biology. In this submission the word women is used to describe all those people.

In preparing this submission WHT has promoted the TLRI consultation process among its networks and consulted with representatives of community groups working within the LGBTIQ+ community in Tasmania: Equality Tasmania, Transforming Tasmania, and Working It Out. We have also discussed the consultation paper with representatives of conversion practice survivor groups, SOGICE (Sexual Orientation and Gender Identity Conversion Experience) Survivors and Brave.

2. The framework which underpins this submission

This submission is based on the following understandings:

Academic research and SOGI (Sexual Identity and Gender Identity) conversion practices

- Peer reviewed research shows that SOGI conversion practices have potentially harmful impacts. People who have undergone them have reported serious psychosocial problems such as depression, post-traumatic stress disorder, low self-esteem, suicidal ideation, relationship problems and social isolation.²
- There is no peer reviewed research which demonstrates the efficacy of SOGI conversion practices.

Human sexuality and gender expression

- Human sexuality is innate and diverse.

¹ Constitution of the World Health Organisation, April 1948 <https://www.who.int/about/who-we-are/constitution>

² TLRI Discussion paper p18

- Human gender identity is innate and diverse.
- Identifying as LGBTQ+ does not mean a person's identity or sexuality is 'diseased', 'damaged', 'broken', or in any other way in need of healing.
- The normal pathway of human development through adolescence and young adulthood includes a time of questioning and exploration of sexuality and identity. It is common for this questioning to feel frightening, painful, stressful, and isolating. These feelings are exacerbated and can have long term mental health impacts when they are accompanied by feelings or experiences of stigmatisation.

Human rights and the expression of religious belief

Faith communities have expressed the concern that the Victorian *Change or Suppression (Conversion) Practices Prohibition Bill 2020* is a significant threat to religious freedom. In our view this anxiety is unfounded. The Bill does not prohibit religious or spiritual activity, just those practices which seek to change or suppress individuals' sexual orientation or gender identity and cause injury to that individual, and the person committing the conversion is negligent as to whether engaging in the conversion practice will cause injury. The law therefore proscribes a very specific set of behaviours in the interest of public safety. There is no right in Australian or international law to freely act on religious conviction in any circumstance.

The substantive right to religious freedom as it is outlined in international law seeks to give people the right to the enjoyment of their faith while protecting the right of others to protection from distress or injury. In this body of law, the right to manifest a religion or belief covers the following types of conduct: the right to worship or assemble; to establish and maintain appropriate charitable institutions; to make, acquire and use the materials related to the rites or customs of one's religion; to write and publish about ones' religion; to solicit donations; to develop a leadership; to observe holidays and ceremonies.³ The International Covenant on Civil and Political Rights, to which Australia is a signatory, recognises that 'that the right to manifest religious or other beliefs may be subject to limitations that are prescribed by law and necessary to protect public safety, order, health, or morals, or the fundamental rights and freedoms of others.'⁴ In international humanitarian law freedom of belief ensures both freedom of, and freedom from, 'religion or belief'.

3. A definition of Sexual Orientation and Gender Identity conversion practices

WHT utilises the SOGICE Survivors' Statement⁵ to understand what practices are appropriately defined as conversion practices.

SOGI practices are those driven by the following assertions (summarised from the SOGICE Survivors'

³ The Religious Freedom Review: Report of the Expert Panel, s1.46 – 1.49, <https://www.ag.gov.au/RightsAndProtections/HumanRights/Documents/religious-freedom-review-expert-panel-report-2018.pdf>

⁴ The Religious Freedom Review: Report of the Expert Panel,, s 1.53 <https://www.ag.gov.au/RightsAndProtections/HumanRights/Documents/religious-freedom-review-expert-panel-report-2018.pdf>

⁵ SOGICE Survivor Statement, written by survivors of Sexual Orientation & Gender Identity Change Efforts, and the LGBTQA+ Conversion movement, <<http://socesurvivors.com.au/wp-content/uploads/2020/12/Survivor-Statement-A4-Doc-v1-2-Digital.pdf>>

Statement):

- Humans are born with the potential to be heterosexual and cis-gendered
- People become LGBTQ if their development is halted or stunted due to abuse, neglect, inappropriate parenting, social influence, or spiritual issues. LGBTQ identity is understood as 'sexual brokenness' or a disorder.
- LGBTQ people should live celibate lives or seek healing for their sexual brokenness
- Through spiritual practices LGBTQ+ people can change their sexual orientation/gender identity; or achieve celibate status.⁶
- 'Sexual brokenness' is a sign of dysfunction. Therefore LGBTQ+ people are not suited to positions of authority in their faith community.

4. Response to Question 1

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

WHT accepts the working definition provided in the TLRI consultation paper. It appears to reflect the SOGI survivor statement definition summarised above.

WHT supports the use of the term 'practices' to avoid the confusion that comes with using the term 'therapy'. Therapy is a word associated with processes and practices which treat or cure a disorder or a disease. Having a diverse sexuality or gender is not a disorder or a disease. Such confusion would be unhelpful in legislation framed to deter harmful practices.

WHT also supports inclusion of the term 'statements' in the definition where those statements are part of ongoing inducements or advertisements to people to participate in SOGI conversion practices.

5. Response to Question 2

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

WHT supports a proscription on all SOGI conversion practices. We note that in some jurisdictions the legislation is limited to protecting minors (youth under the age of 18) and adults with impaired capacity.

However, we also note that research demonstrates that SOGI conversion practices are harmful to participants and are most likely to be directed at young adults, aged 18 – 25, whose identities and sense of personal autonomy are in development. These same young adults are likely to have grown up in the same faith communities that promote the SOGI practices. We would consider these young adults to therefore be particularly vulnerable to the harmful effects of these practices.

⁶ SOGICE Survivor Statement, Op cit.

It could be argued that there are a range of products and services available to consenting Australian adults that are harmful but unregulated. However, that is not an argument for designing legislation to protect the community from harmful products or practices and unnecessarily narrowing the scope of its protection. A relevant parallel would be female genital mutilation (FGM), a practice which is embedded in complex cultural and faith practices and rooted in an ideology about gender roles and sexuality. FGM is recognised to be harmful and a violation of human rights. It is outlawed in Australia for both children *and* adults.

Further, given that the fundamental assumption of conversion practices, that all people are inherently heterosexual and cis-gendered, is false and misleading, it is WHT's view that it is not possible to give informed consent to these practices.

6. Response to Question 3

Have you been involved in or offered, or are you aware of, any forms of SOGI conversion practices in Tasmania?

Over the years WHT staff have had contact with some SOGI conversion practice survivors. However, these were women who had experienced these practices in other states and had moved to Tasmania to distance themselves from their families and communities. It is possible that there is a similar pattern of dispersal of Tasmanian SOGI survivors who have rejected these practices, and who have therefore placed themselves outside their childhood communities. SOGI survivors who are still engaged with these practices, or who privately reject them but do not wish to lose contact with their families or their faith communities, are unlikely to come forward to complain.

However, it is reasonable to believe SOGI practices occur here. Churches and groups associated with SOGI conversion practices on the mainland have a presence in Tasmania. This includes groups associated with more fundamental religious beliefs and socially conservative practices. It also includes larger mainstream churches who are not necessarily associated with these practices.

For example, a google of the phrase 'healing homosexuality Tasmania' returns information about talks delivered in Hobart by the Executive Director of an international ministry working to encourage gay people to be celibate that is associated with the Catholic Church.⁷ The purpose of the tour was to discuss starting a chapter in Hobart.⁸ This is not to single out the Catholic church, but to point to a tension within the larger, more mainstream churches. While most Catholics globally support same sex relationships and same sex marriage⁹, Catholic theology does not. Catholic catechism defines 'homosexual acts' as 'intrinsically disordered'.¹⁰ This example shows that within the umbrella of the larger Tasmanian faiths there is a wide diversity of views and practices.

It is also important to note that while the number of SOGI conversion practice survivors are low in

⁷ Courage International, "Walking with the Whole Person: The Catholic Church and Homosexuality, Talk recorded by the Archdiocese of Hobart, <<https://cradio.org.au/cradiotalks/walking-whole-person-catholic-church-homosexuality/>>

⁸ "The worldwide outreach helping same-sex attracted people find the courage to be chaste", *The Catholic Leader*, October 24, 2016 <<https://catholicleader.com.au/analysis/the-worldwide-outreach-helping-same-sex-attracted-people-find-the-courage-to-be-chaste>>

⁹ PEW Research Center, "How Catholics around the world see same-sex marriage, homosexuality, Nov 2, 2020 <https://www.pewresearch.org/fact-tank/2020/11/02/how-catholics-around-the-world-see-same-sex-marriage-homosexuality/>

¹⁰ Catechism of the Catholic Church, s.2357 'Chastity and homosexuality', p 568, <<https://www.usccb.org/sites/default/files/flipbooks/catechism/568/index.html>>

the general population, the evidence demonstrates that the impact of these practices is extreme, with survivors reporting severe mental injury, even suicidal ideation.

7. Response to 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)?

Tasmanian law is currently inadequate to deal with the issue of SOGI conversion practices. Our discussions with survivors of SOGI conversion practices about this experience and a review of survivor testimonies reinforces for WHT the veracity of the Institute's conclusion that current law is not appropriately directed and tailored to the nature and scope of SOGI conversion practices. We therefore support comprehensive reform.

The value of legislation tailored directly to deal with problems embedded in cultural issues and patterns of injury is demonstrated in the case of non-fatal strangulation. Understanding the association of this offence with patterns of family violence a series of Australian jurisdictions have moved to create standalone legislation to deal with this crime rather than having it fall under the Criminal Code.¹¹

8. Response to Question 5

Should some or all forms of SOGI conversion practices be criminalised in Tasmania?

The Victorian legislation *Change or Suppression (Conversion) Practices Prohibition Bill 2020*¹² offers a useful model which could be built on in Tasmania. The Bill prohibits practices that cause injury or serious injury and provides for appropriate sanctions to the level of harm occasioned by these practices, as reported by the evidence.

The Victorian legislation allows for up to 10 years imprisonment or fines of up to 6000 penalty points for the following offences for both individuals and corporate entities

- Engaging in change or suppression practices that cause serious injury (as defined by the Victorian *Crimes Act 1958*)
- Engaging in change or suppression practices that cause injury
- Taking a person out of Victoria for a change or suppression practice
- Advertising a change or suppression practice

WHT also supports the criminalisation of conversion practices in health settings such as counselling, psychology practices or psychotherapy. However, we note that given the position of professional bodies regarding conversion practices these settings are less likely to pose a risk to the wellbeing of LGBTQ+ people.

A great deal of 'counselling' and 'therapy' is currently offered by people with no or dubious qualifications, who are outside the remit of any statutory regulatory body or professional association. This can happen in complementary health settings and pastoral care relationships. It can be delivered in the context of community group settings, clubs or support groups, or through

¹¹ This issue is under debate in Tasmania and is currently being reviewed by the Tasmanian Sentencing Advisory Council.

¹² Government of Victoria, *Change or Suppression (Conversion) Practices Prohibition Bill 2020*
<<https://www.legislation.vic.gov.au/bills/change-or-suppression-conversion-practices-prohibition-bill-2020>>

chaplains programs.

The SOGICE Survivor statement¹³ offers a useful framework for defining when positive and helpful pastoral care relationships become interventions that should be identified as SOGI conversion practices and prohibited. It is when conversion ideology defines or frames the conversation, advice, recommendations or practices that occur in the pastoral care relationship; and when either or both of the following occur:

- a. The person in the pastoral care role is in a position of authority or leadership, creating an imbalanced power dynamic;
- b. The practices and pastoral care occur in a recurrent or semi-regular manner.

9. Response to Question 6

Should some or all forms of SOGI conversion practices be made civil wrongs in Tasmania?

WHT does not support SOGI conversion practices being made civil wrongs.

The Victorian legislation does not include a penalty for SOGI conversion practices that fall short of the criminal standard. The legislators' rationale for this was that

- Civil penalties are generally part of a regulatory scheme, providing a financial disincentive to ensure practitioners comply with regulatory requirements, but there is no regulatory scheme covering SOGI conversion practices. Therefore, any system of fines operating in this environment would be a quasi-criminal penalty sitting at the lower end of the scale of criminal penalties.
- A view that with regard to SOGI conversion practices civil penalties would not be an appropriate or effective way of addressing harm and ensuring compliance.
- The intention that the criminal penalties will be an injury prevention strategy.¹⁴

We understand that legislating a criminal response to SOGI conversion practices would not preclude a victim of these practices from suing a SOGI conversion experience practitioner for damage or loss.

10. Response to Question 9

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

The inclusion of gender identity suppression

We note the debate in the mainland media questioning the inclusion of gender identity in the legislation. It is critical that any legislation to address conversion practices must include practices that are intended to change or suppress gender identity.

Our experience of working with people who are trans and gender diverse is that the process of exploring or transitioning gender diversity is a vulnerable and difficult time and that experiences of harmful practices at this time contribute to high rates of self-harm, mental ill health and suicide. It is important that work with people exploring gender identity is done by qualified professionals. In Australia, the process of working with people exploring gender identity has robust safeguards and utilises multidisciplinary teams of medical professionals. It is saving lives. It does not represent any

¹³ SOGICE Survivor Statement, Op cit.

¹⁴ Victorian Department of Justice Communication with SOGICE Statements, pers. Comm.

‘extreme’ of medical ideology or practice. The Family Court found that the Australian standards of care and treatment for trans and gender diverse children and adolescents represented ‘the orthodox middle’ (Re Imogen) and that these standards are well supported by the majority of the country’s medical profession.

Clearly this process is different from unregulated courses, conversations, practices directed at young people exploring gender identity which are predicated on the ideology outlined above (see section 3), an ideology which states that:

- Humans are born with the potential to be heterosexual and cis-gendered
- People become gender diverse if their development is halted or stunted due to abuse, neglect, inappropriate parenting, social influence, or spiritual issues.
- Gender diverse people should seek healing for their sexual brokenness.
- Through spiritual practices gender diverse people can change their gender identity.¹⁵
- Gender diversity is a sign of dysfunction. Therefore, gender diverse people are not suited to positions of authority in their faith community.

Legislation which prohibited gender identity suppression practices in line with the definition above would not prohibit conversations about gender diversity between people and their families and their health professionals, but WHT would recommend criminalising conversation, advice, recommendations or practices that occur in pastoral relationships when

- The person providing the advice or practices is in a position of authority or leadership;
- The conversation, advice, recommendations or practices occur in a recurrent or semi-regular manner; and
- The conversation, advice, recommendations or practice is likely to cause injury to the victim.

Education to support reform

In the past, law reform has been most effective when it has been accompanied by community education programs. Previous legal reforms which have raised anxiety about parents’ rights (eg Children, Young Persons and Their Families Act 1997, the amendment to the Criminal Code which banned Female Genital Mutilation (1999)) have been accompanied by community education programs. Similarly, legislation which impacted on what had previously been considered private and family matters (the Family Violence Act 2004) was also accompanied by a community education campaign.

We would suggest that any law reform be accompanied by a similar program. This would be supportive of the many LGBTQ+ people who are members of faith communities and of the non-LGBTQ+ folk in faith communities who are looking helpful ways to include and support their LGBTQ fellow worshippers.

¹⁵ SOGICE Survivor Statement, Op cit.