Concerned Catholics Tasmania

A Summary of our Context and Conclusion

Concerned Catholics Tasmania is a group of Catholics committed to ensuring Catholic lay people in the Archdiocese of Hobart have an effective role and voice in its administration and direction, and an effective means of providing support to one another as we work collaboratively to carry out the mission of our Church. While our members are primarily Catholic lay people, a number of Catholic priests and religious sisters and brothers are also members.

Further information on Concerned Catholics Tasmania, including the catalyst to its establishment and mission, is given at the end of this submission.

We note that the position of many proponents of conversion practices is predicated upon their Christian or other religious beliefs and questionable interpretations of sacred texts. We maintain that, as Christians and Catholics from our perspective, those Christian proponents' positions are untenable and must be contested. For that reason, both by way of rebuttal and alternatively, we outline our Christian Catholic perspective at length.

We also highlight significant inconsistencies in the provisions of the *Consultation Draft Bill* (Bill) as they relate to its interpretation and implementation, and its weaknesses when compared to legislation in other parts of Australia.

Our conclusion from our study is that the Bill does not effectively address the damage caused by sexual orientation and gender identity (SOGI) conversion practices (conversion practices). We cannot support the Bill because it does not achieve the noble objectives we had hoped it would achieve.

Concerned Catholics Tasmania

Introduction

This submission is broken into five parts. The first describes what attracted our attention. The second what causes us to take a more careful look using the see-judge-act methodology of Catholic Social Teaching. The third, outlines our general concerns about the Bill. Fourth, addresses our particular concerns not raised elsewhere. Finally, our conclusions.

For us it is profoundly disappointing that our conclusion is that the Bill does not effectively address the damage caused by sexual orientation and gender identity conversion practices. We cannot support the Bill because it does not achieve the noble objectives we had hoped it would achieve.

Our impetus

The genesis of this submission is threefold. First, the adverse impact on members and associates of our organisation who have encountered and supported people endeavouring to recover from the damage caused by sexual orientation and gender identity (SOGI) conversion practices; second, concern for those damaged, and finally the minimisation or elimination of the risk of harm being caused to those who may yet be subjected to those practices.[1]

Our members' and associates' experiences and concerns have been corroborated by the investigations and findings of the Tasmanian Law Reform Institute (TLRI) set forth in the *Sexual Orientation and Gender Identity Conversion Practices* Final Report No. 32 April 2022 (Report). The Report makes clear that:

> *Studies suggest that SOGI conversion practices cause harm to those subject to them. Harms include higher rates of low self-esteem, depression, alienation, loneliness, social isolation, internalised homophobia, sexual dysfunction, relationship problems, drug abuse, post-traumatic stress disorder, suicidal ideation, and suicide attempts. Recent studies suggest the long-term effects of SOGI conversion practices can be serious.*[2]

Our impulses

As the position of many proponents of conversion practices is predicated upon their Christian or other religious beliefs and questionable interpretations of sacred texts, we maintain that, as Christians and Catholics from our perspective, those Christian proponents'

[1] The Expression "Sogi Conversion Practices" Used Here Is Defined In The Tlri Sexual Orientation And Gender Identity Conversion Practices Final Report No. 32 April 2022 In The Executive Summary, Pg. Iv.
[2] Ibid, Para. 4.2.5

positions are untenable and must be contested. For that reason both by way of rebuttal and alternatively, we outline our Christian Catholic perspective at length.

Ultimately, the Great Commandment that we love our neighbour as ourselves calls us to uphold the human dignity of all, seek the common good for our community and work in solidarity. These are matters for the heart as well as the intellect. The response to conversion practices should always prioritise care and compassion for others.

That compassion should be practical and direct. The manner in which compassion is expressed is illuminated by the parable of the Good Samaritan. Pope Francis has put it this way:

> *Saint Paul, recognizing the temptation of the earliest Christian communities to form closed and isolated groups, urged his disciples to abound in love "for one another and for all" (1 Thess 3:12). In the Johannine community, fellow Christians were to be welcomed, "even though they are strangers to you" (3 Jn 5). In this context, we can better understand the significance of the parable of the Good Samaritan: love does not care if a brother or sister in need comes from one place or another. For "love shatters the chains that keep us isolated and separate; in their place, it builds bridges. Love enables us to create one great family, where all of us can feel at home… Love exudes compassion and dignity".*[3]

From the dignity, unity and equality of all people stems the principle of the common good and we understand that to mean, "the sum total of social conditions which allow people, either as groups or as individuals, to reach their fulfillment more fully and more easily." [4]

The flourishing of the other and flowering of their intrinsic individuality evident in their traits and attributes is not accomplished by suppression or eradication of those traits or attributes proper to their nature, regardless of whether or not they are considered antithetical to a set of religious beliefs.

Further, our Catholic church teaches "Each human community possesses a common good which permits it to be recognized as such; it is in the political community that its most complete realization is found. It is the role of the state to defend and promote the common good of civil society, its citizens, and intermediate bodies."[5]

Our call is not simply to consider and reflect on the pain and suffering of others. That was not the response of the Good Samaritan. Again, Pope Francis indicates,

> *The parable eloquently presents the basic decision we need to make in order to rebuild our wounded world. In the face of so much pain and suffering, our only course is to imitate the Good Samaritan. Any other decision would make us either one of the robbers or one of those who walked by without showing compassion for the sufferings of the man on the roadside. The parable shows us how a community can be rebuilt by men and women who identify with the vulnerability of others, who reject the creation of a society of exclusion, and act instead as neighbours, lifting up and rehabilitating the fallen for the sake of the common good.*[6]

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[3] Encyclical Letter Fratelli Tutti On Fraternity And Social Friendship, Para.62
https://Www.Vatican.Va/Content/Francesco/En/Encyclicals/Documents/Papa-Francesco_20201003_Enciclica-Fratelli-Tutti.Html

[4] Catechism Of The Catholic Church, Part Iii, Life In Christ, Chapter 2 The Human Communion, Article 2 Participation In Social Life, Ii. The Common Good, Para. 1906
https://Www.Vatican.Va/Archive/Eng0015/__P6k.Htm

[5] Ibid, Para 1910

[6] Fratelli Tutti, Para 67

These teachings are foundational to Article 1 of the United Nations Universal Declaration of Human Rights which reads,

> ***Article 1*** *All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.*

In relation to the proposed legislation it is interesting to read the preamble to the Declaration as it refers to what generated it.

> ***Preamble***
>
> *Whereas recognition of* ***the inherent dignity and of the equal and inalienable rights of all members of the human family*** *is the foundation of freedom, justice and peace in the world,*
>
> *Whereas* ***disregard and contempt for human rights have resulted in barbarous acts*** *which have* ***outraged the conscience of mankind****, and* ***the advent of a world*** *in which* ***human beings shall enjoy freedom of*** *speech and* ***belief*** *and* ***freedom from fear*** *and want has been proclaimed* ***as the highest aspiration of the common people,*** *(our emphasis)*

There is good reason to reflect upon whether conversion practices fall within the term "barbarous acts".

In our church we use the *See-Judge-Act* method to arrive at what we should do. That method was developed by Belgian Cardinal Joseph Cardijn (1882–1967). As a priest, he ministered to poor workers and founded the Young Christian Workers movement. He was one of the Fathers of the Second Vatican Council. Many maintain the method is rooted in Thomas Aquinas' description of the virtue of prudence.

After *seeing* how some Tasmanians have been harmed and the risk of damage to more Tasmanians by conversion practices, we are called to *judge* this reality in the light of the Gospel transmitted through the primary principles of Catholic Social Doctrine, namely, the dignity of each human, the common good and solidarity which are based on the inherent dignity inalienable rights of all members of the human family.

On the one hand, we are not aware of evidence which supports the proposition that there are beneficial outcomes from employing conversion practices. On the other, we have encountered concrete examples of the severe harm, pain, damage, suffering and isolation individuals have endured from having been subjected to conversion practices.

In our *judgment*, the principles of the common good, human dignity and solidarity with our fellow Tasmanians in protecting them from the potential for and risk of harm which may damage them and us lead us to the conclusion that there is much to be gained by outlawing conversion practice and little will be lost in its prohibition.

So we must *Act*. Hence our submission.

Evidence of Harm - Evil

We support the findings and recommendations of the TLRI set forth in the Executive Summary to its in entitled *Sexual Orientation and Gender Identity Conversion Practices Final Report No. 32 April 2022* and seek below to highlight aspects of the Report using its language and highlighting what is of particular importance and concern to us.

1 The report recommends reform of Tasmanian laws to address the risks and harms caused by conversion practices.

2 The pervasiveness of the notion that people with 'incorrect' SOGI traits or attributes (normally LGBTQA+ traits or attributes) have a fault or dysfunction and such traits or attributes can and should be changed, suppressed, eradicated or eliminated.

3 The lack of awareness that conversion practices were once part of mainstream medicine and are now regarded as abusive physical, psychiatric and psychological practices that caused profound and lasting harm to LGBTQA+ people. Community education is warranted.

4 LGBTQA+ traits or attributes are not faults or dysfunctions and a belief to the contrary contributed to social stigma and discrimination towards and abuse against sexual and gender minorities. Again, community education is warranted.

5 Conversion practices are now firmly rejected by mainstream science and medicine. The mainstream medical consensus now is that:

- LGBTQA+ traits or attributes are not faults or dysfunctions;
- Conversion practices lack efficacy (they are not successful in doing what they claim to do in a safe or reliable way); and
- Conversion practices involve serious risks of causing serious and lasting harm to those subject to them.

6 All peak health bodies and public health officers who responded to this Inquiry called for the regulation and prohibition of conversion practices, including the Australian Medical Association Tasmania, Australian Professional Association for Trans Health, Australian Psychological Society, Tasmania's Chief Civil Psychiatrist, the Tasmanian Gender Service, the Mental Health Council of Tasmania, the Royal Australian and New Zealand College of Psychiatrists, and Women's Health Tasmania [see 4.3.1-4.3.12 of the Report].

7 The United Nations Independent Expert on Protection Against Violence and Discrimination reported that conversion practices are "by their very nature degrading, inhuman and cruel and create a significant risk of torture". It is therefore not a long stretch to characterise conversion practices as "barbarous", as is mentioned in the Preamble above.

8 A large number of international jurisdictions have now proscribed conversion practices, have de facto bans, or are in the process of drafting or debating prohibitions [see 5.2.8 of the Report]. Queensland, the ACT and Victoria have passed

legislation proscribing conversion practices and legislation has been proposed in the other states.

Acting against Harm – Evil

Again, along with the TLRI, we too recommend:

1 Subject to 3 below, a statutory prohibition on the clinical assessment or treatment of sexual orientation as a mental health disorder. The general consensus within the medical profession is that sexual orientation is not a mental health disorder.

2 Subject to 3 below, gender identity must be similarly legally depathologized.

3 Any law reform should not prevent supportive, evidence-based medical practice designed to advise, counsel, support or treat mental health symptoms relating to gender dysphoria/incongruence when provided by accredited and authorised specialist health professionals who apply standards declared by the Chief Civil Psychiatrist.

4 Assessing and treating gender-related disorders should be regulated by clinical guidelines set by the Chief Civil Psychiatrist under the Mental Health Act in consultation with appropriate professional bodies.

5 Accredited and authorised specialist health professionals who apply standards declared by the Chief Civil Psychiatrist in good faith should be exempt from liability other than under existing professional standards regulations.

6 Any person who is unqualified and unauthorised to conduct mental health assessments or care should be prohibited from doing so.

7 Complaint handling about conversion practices should be a matter for the Health Complaints Commission using the current parameters of its jurisdiction. Other complaints should be within the jurisdiction of the Equal Opportunity Tasmania.

8 Complainants should have access to civil liability schemes. This will provide compensation for any injury and act as a deterrent.

9 Criminal offences should be created so those conducting, encouraging, aiding or abetting conversion practices are able to be prosecuted. Prima facie, conversion practices directed towards children should be categorised as a form of child abuse.

Any reforms should not affect:

10 Legitimate health care, relating to SOGI patients, provided by accredited and authorised specialist health professionals in good faith in accordance with clinical guidelines and standards set by the Chief Civil Psychiatrist under the Mental Health Act in consultation with appropriate professional bodies.

11 Statements, expressions of faith, interpretations of moral, philosophical or religious doctrine about SOGI provided that they fall outside conversion practices.

12 Public acts done in good faith for academic, artistic, scientific or research purposes or any purpose in the public interest.

13 Supportive care, guidance, or mentoring of a child by a parent or guardian which are conducted in the best interest of the child.

In addition to law reform;

14 Funding and resources should be allocated for educational materials and community organisation initiatives to inform the LGBTQA+ and religious communities and the general population about what SOGI conversion practices are, what they are not, why they are harmful and why they are now unlawful.

Our commentary on the Justice Miscellaneous (Conversion Practices) Bill 2024

General comments

1 The Bill is a tepid and fundamentally flawed response, in terms of making a clear proclamation or declaration of our community's rejection and denunciation of conversion practices, our recognition of the ineffectiveness and the harm such practices cause, and the risks attendant to people subjected to what are barbarous and inhuman practices.

We were perturbed to read in the Report paragraphs 4.6.8 and 4.6.9 which state:

> 4.6.8 Apart from the one anonymous submission quoted above, the TLRI did not receive any submissions where a respondent stated that SOGI conversion practices had worked for them personally. That submission relayed accounts of themselves and two other anonymous people, which are difficult to verify and lack any stated connection to Tasmania (besides the point on using conversion practices while visiting Tasmania in the second account). The TLRI received other submissions that detailed negative effects of conversion practices that did not have a clear connection to Tasmania, and for that reason did not rely on them in Part 4.5.
>
> 4.6.9 The accounts quoted and cited above are the total of personal accounts of positive effects of SOGI conversion practices received in the submissions to this Inquiry. Importantly, no medical practitioner submitted any account of patients or clients who had positive experiences with SOGI conversion practices. That is significant because, even in reporting anecdotal experiences, expertise in clinical efficacy and harm would be important for accepting the possibility of either effectiveness or positive benefits. Given the reports of medical practitioners offering SOGI conversion practices within Tasmania, it is possible that at least one of these practitioners might have attested to their successes or the positive benefits on their clients. Such a submission could have been made anonymously and/or under a pseudonym. No such submission was made.

2 The deficiencies in the Bill come into sharper focus when it is compared to similar endeavours to outlaw conversion practices in other Australian jurisdictions.

In Queensland, conversion practices are prohibited by Chapter 5B inserted into the Public Health Act 2005 by the Health Legislation Amendment Act 2020 which came

into effect in August 2020, making Queensland the first jurisdiction in Australia to outlaw conversion practices.

The Queensland approach, amending existing legislation rather than creating a separate act, is the same approach taken by the Bill.

Unfortunately, in Queensland, by embedding the prohibition of conversion practices in existing legislation rather than enacting separate legislation, the opportunity to make a clear and open proclamation or declaration of the community's rejection and denunciation of those practices was lost. Regrettably, it seems the same approach is Tasmania will mean that same opportunity will be lost.

Nevertheless, the Chapter 5B changes are vastly superior to those proposed in the Bill.

First, in Queensland the definition in section 213F of Chapter 5B is "***Conversion therapy*** is a practice that attempts to **change or suppress** (our emphasis) a person's sexual orientation or gender identity." In Tasmania, the Bill proposes an amendment to the *Police Offences Act 1935* by inserting subsection 28(1) which, inter alia, includes this definition "a ***conversion practice*** is a practice that attempts to **change or eradicate** (our emphasis) the sexual orientation or gender identity of the recipient of that practice."

It is interesting to note that both in the Queensland legislation and in section 5 of the Victorian *Change or Suppression (Conversion) Practices Prohibition Act 2021* change and suppression are used. Hence, "eradicate" is particular and peculiar to the Bill.

The significant difference is that in Chapter 5B "suppress" is used whilst in the Bill "eradicate" is used. The result is that, in Tasmania, assisting a person to suppress their sexuality will remain lawful as that is neither assisting a person to change nor assisting a person to eradicate their sexual orientation or gender identity.

The conversion practice of assisting a person to suppress their sexual orientation or gender identity will remain alive and well.

Second, in Chapter 5B the definitions of "sexual orientation" and "gender identity" are contained in and combined together in that Chapter.

The Bill incorporates the definition of "gender identity" only by reference to the *Anti-Discrimination Act 1998.* That definition is separated from and not together with the definition of "sexual orientation" and other provisions to do with conversion practices which are within the *Police Offences Act 1935*. In that respect, the Bill is not user friendly for the average citizen to read. Why not cut and paste?

Third, in the Tasmanian *Anti-Discrimination Act 1998* and the Bill the definition of "gender identity" is:

"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."

It is open to the interpretation that "gender identity" in Tasmania is determined by observable indicia.

In the Queensland legislation, Chapter 5B, "gender identity" is defined as follows:

213G Meaning of *gender identity*

(1) *Gender identity*, of a person, is the person's internal and individual experience of gender, whether or not it corresponds with the sex assigned to the person at birth.

(2) Without limiting subsection (1), the *gender identity*, of a person, includes—

(a) the person's personal sense of the body; and

(b) if freely chosen—modification of the person's bodily appearance or functions by medical, surgical or other means; and

(c) other expressions of the person's gender, including name, dress, speech and behaviour.

It is open to the interpretation that "gender identity" in Chapter 5B is subjective.

This distinction is important. As Chapter 5B definition makes it more difficult for an accused to argue that they were unaware of the identity of the subject of their practice or therapy, such as, "being more a man or woman". Such an accused would need to have asked the question about identity before venturing forth to avoid risk.

Under the Bill, the defence of "they didn't look like it to me" is open, arguably.

Fifthly, Chapter 5B provides examples of both practices and exceptions which are helpful. Adopting that approach in the Bill would have been helpful and useful.

3 The titles of legislation in Victoria and the Australian Capital Territory (ACT) and more than likely in New South Wales (NSW - only a bill currently) make clear the subject matter of the law and, in two instances, are proclamations and declarations that the community rejects and denounces conversion practices.

The title of the legislation in each of those jurisdictions is:

ACT *Sexuality and Gender Identity Conversion Practices Act 2020*

Victoria *Change or Suppression (Conversion) Practices Prohibition Act 2021*

NSW Conversion Practices Prohibition Bill 2023

The Bill will not make a clear declaratory statement that a separate act titled in a similar manner would have.

In each of those three jurisdictions objects or purposes or both are stated in the legislation:

ACT section 6

Victoria sections 1 and 3

NSW section 3

Again, the Bill does not include similar provisions which would provide a clear declaratory statement of prohibition and denouncement.

Finally, the definition of "health service provider" in Victoria and Queensland is coupled to the Health Practitioner Regulation National Law (the National Law). There is serious risk that the Bill's loose definition will allow non-professional health-related workers to claim legal status as a "health provider", as we discussed. The usefulness and significance of the Bill departing from this approach is examined below.

The National Law was enacted in each state and territory of Australia in 2009 and 2010. The goal of the National Law was to create a national registration and accreditation scheme for registered health practitioners (the National Scheme).

The following definitions can be found in the Health Practitioner Regulation National Law (Act) at section 5:

"health practitioner" means an individual who practises a health profession.

"health profession" means the following professions, and includes a recognised specialty in any of the following professions—

(a) Aboriginal and Torres Strait Islander health practice;
(b) Chinese medicine;
(c) chiropractic;
(d) dental (including the profession of a dentist, dental therapist, dental hygienist, dental prosthetist and oral health therapist);
(e) medical;
(f) medical radiation practice;
(g) midwifery;
(ga) nursing;
(h) occupational therapy;
(i) optometry;
(j) osteopathy;
(ja) paramedicine;
(k) pharmacy;
(l) physiotherapy;
(m) podiatry;
(n) psychology.

"health service" includes the following services, whether provided as public or private services—

(a) services provided by registered health practitioners;

(b) hospital services;

(c) mental health services;

(d) pharmaceutical services;

(e) ambulance services;

(f) community health services;

(g) health education services;

(h) welfare services necessary to implement any services referred to in paragraphs (a) to (g);

(i) services provided by dietitians, masseurs, naturopaths, social workers, speech pathologists, audiologists or audiometrists;

(j) pathology services.

"health service provider" means a person who provides a health service.

We have not as yet verified whether, as is proposed by TLRI, the assessment and treatment of gender-related disorders have been regulated by clinical guidelines set by Chief Civil Psychiatrists or the like under the mental health legislation or similar in Queensland, Victoria or the ACT which would limit such assessment and treatment to accredited and authorised specialist health practitioners who apply such guidelines and standards.

Whichever is the case, the regime recommended by the TLRI is to be commended.

Particular reservations

1 The Bill proposes to amend the *Police Offences Act 1935* by inserting section 27, inter alia, which includes these definitions and changes Schedule 1 as shown with strikeout and in red:

health service provider has the same meaning as in the *Health Complaints Act 1995*.

The Bill proposes to amend the *Police Offences Act 1935* by inserting section 27 which includes these definitions and changes Schedule 1 as shown with strikeout and in red***:***

health service provider has the same meaning as in the *Health Complaints Act 1995*

health service means –

~~(a) a service provided to a person for, or purportedly for, the benefit of human health –~~

~~(i) including services specified in Part 1 of Schedule 1 ; but~~

~~(ii) excluding services specified in Part 2 of Schedule 1 ; or~~

(a) a service specified in Part 1 of Schedule 1, but does not include a service specified in Part 2 of that Schedule; or

(b) an administrative service directly related to a health service specified in paragraph (a);

SCHEDULE 1 - Health Services

Section 3

PART 1 - Services that are health services

1. A service provided at a hospital, health institution or nursing home.

2. A medical, dental, pharmaceutical, mental health, community health, environmental health or specialized health service or a service related to such a service.

3. A service provided for the care, treatment or accommodation of persons who are aged or have a physical disability or mental dysfunction.

4. A laboratory service provided in support of a health service.

5. A laundry, dry cleaning, catering or other support service provided to a hospital, health institution, nursing home or premises for the care, treatment or accommodation of persons who are aged or have a physical disability or mental dysfunction, if the service affects the care or treatment of a patient or a resident.

6. A social work, welfare, recreational or leisure service, if provided as part of a health service.

7. An ambulance service.

8. Any other service provided by a provider for, or purportedly for, the care or treatment of another person.

9. A service provided by an audiologist, audiometrist, optical dispenser, dietitian, prosthetist, dental prosthetist, psychotherapist, medical radiation science professional, podiatrist, therapeutic counsellor or any other service of a professional or technical nature provided for, or purportedly for, the care or treatment of another person or in support of a health service.

10. A service provided by a practitioner of massage, naturopathy or acupuncture or in another natural or alternative health care or diagnostic field.

11. The provision of information relating to the promotion or provision of health care or to health education.

11A. A service provided at a hospital or health institution for the temporary storage of human remains as defined in the Burial and Cremation Act 2002.

11B. A service provided for, or purportedly for, the assessment or treatment of a person in relation to that person's sexual orientation or gender identity including, but not limited to, attempting to change or eradicate the person's sexual orientation or gender identity.

12. Any other service provided by a person registered by a registration board."

In order to illustrate how these provisions might apply, let us imagine that we have been approached by a contract cleaner, Sam, who provides cleaning services at the Legana Medical Centre and is keen to expand the business to provide conversion practices for a fee. Sam seeks your advice.

A threshold question is, does Sam provide a health service? Schedule 1 item 1 applies as Sam is a "service provided at a health institution", that is the Legana Medical Centre. Further, another string to Sam's bow is the firm provides cleaning services which fall within item 5 as an "other support service provided to a health institution".

The next step is to question whether what Sam proposes to do is either permitted or falls within the many exemptions in the proposed subsections 28(2), (3) and(4) which will provide:

(2) For the purposes of this Division, ***conversion practice*** does not include a practice by a health service provider that, in the provider's reasonable judgment –

(a) is part of the clinically appropriate assessment, diagnosis or treatment of a person, or clinically appropriate support for a person; or

(b) enables or facilitates the provision of a health service for a person in a manner that is safe and appropriate; or

(c) is necessary to comply with the provider's legal or professional obligations.

(3) For the purposes of this Division, ***conversion practice*** does not include the following practices:

(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.

(4) For the avoidance of doubt, a practice that amounts to no more than the expression of an opinion, idea or belief by a person, including a statement of religious principle or the provision of parental guidance, is not a conversion practice for the purposes of this Division.

Rather than take the rocky path of endeavouring to fall within the exemptions in paragraphs 28(2)(a) and (b), Sam, having contracted to provide conversion services can rely on paragraph 28(2)(c). All Sam needs to do, as a heath service provider, is form the reasonable judgment that it is necessary to provide contracted services to comply with the Sam's legal obligations as that brings Sam within the exemption.

The broad definition of "health service provider" and the exemptions in the Bill enlarges the classes of persons who are exempted from the prohibition of conversion practices and will allows persons not qualified under agreed national standards to self-identify as "health providers" and act on the same footing as fully qualified health professionals. According to the Government, this Bill is intended to outlaw conversion practices. Actually, it will enable many unqualified people to continue to prey on LGBTIQA+ to a greater extent than currently, as the Bill opens the door to conversion practices and effectively endorses them.

Further, the exemptions in subsection 28(3) have not been limited to accredited and authorised specialist health professionals who comply with clinical guidelines set by the Chief Civil Psychiatrist under the Mental Health Act. So, there are also opportunities there for Sam to claim legitimate status as a conversion therapist.

Finally, any counselling Sam might want to provide as long as it is expressed as "an opinion" is exempt under section 28(4).

Generally, the gateways to conversion practices are through Schedule 1 and the exemptions mentioned.

The Bill is analogous to the Parliament saying you must not drive from Hobart to Bridgewater on the Brooker Highway full well knowing that going via the Tasman Bridge, Lindisfarne and Old Beach will get you there anyway.

The Bill could have adopted the National Law as has happened in Queensland and Victoria. We note that in Tasmania the Health *Practitioner Regulation National Law (Tasmania) Act 2010* adopted the national scheme many years ago now.

2 There are a number of deficiencies in that part of section 4 of the Bill which inserts section 29 into the *Police Offences Act 1935.*

First, under subsection 29 (1) the prosecution will need to prove beyond reasonable doubt that a person has caused *"physical or mental harm to the recipient of that conversion practice*".

It is difficult to see how a prosecutor could show that it was only the conversion practice which caused harm. Eliminating the possibility of other causes of harm or the combination of harm caused by conversion practices and other causes and attribution is a tall order.

Given that the evidence is both that conversion practices are ineffective at the least and in most cases harmful, the common good is advanced by an unequivocal outlawing of such practices save for those which fall within exemptions given to medically qualified registered medical practitioners as previously described.

Second, the subsection 29 (4) defences make the defendant's task herculean.

It provides:

> (4) It is a defence in proceedings for an offence under subsection (1), if the defendant establishes that the recipient of the conversion practice –
>
> (a) was an adult; and
>
> (b) consented to the carrying out of the conversion practice; and
>
> (c) understood, at the time consent was given, that the conversion practice could cause physical or mental harm.

Had this one defence been open only to medically qualified registered medical practitioners as previously described, then the offence created by subsection 29 (1) might not have looked like entrapment.

While such practitioners are aware of the need for and how to seek informed consent and avoid undue influence, that is territory unfamiliar to ordinary citizens who do not traverse it.

That lack of familiarity with the ideas of informed consent and undue influence coupled with a fervent desire to bring a person within the tenets of a religious or philosophical regime creates a trap for any ordinary person administering conversion practices.

The predicament for a defendant is that the defendant must make out the defence, "the defendant establishes". The defendant needs to establish that the complainant both gave informed consent and understood what harm may follow. The defendant faces

a prosecution case that is insurmountable, if the complainant is a child. The paragraphs in subsection 4 are conjunctive.

Once an adult complainant has evidence that there was no informed consent and understanding, how does the defendant prove the contrary or establish reasonable doubt? It is highly unlikely that a complainant other than the person subjected to a conversion practice would be able to persuade prosecutorial authorities to launch a prosecution unless the person subjected to that practice was also willing to complain, in which case and in effect, the complainant is the subject of the practice. The prosecutorial authorities are unlike to commence proceedings unless the person subjected to that conversion practice is willing to give evidence that no informed consent was given or that person has no understanding and was not warned about the harm which might follow the practice.

This trap defence should be removed.

3 The Bill does not address most of the recommendations of TLRI. In particular, civil remedies have not been addressed. It is well known that the Criminal Law is a particularly blunt instrument to deal with allegations in circumstances in which it is the word of one person against another. As with sexual assault and rape allegations, civil remedies provide an easier path for those harmed to establish their case and would have a consequential deterrent effect.

4 Our view is that the Bill needs completely redrafting under the oversight of a bipartisan committee. Like Equality Tasmania, we support a complete rewrite of the Bill.

Conclusion

In conclusion, we stress the need for our parliamentarians to seek the common good, reflect upon what is in the best interests of the Tasmanian community as a whole and counsel sectional interests to apply the same approach. Given the harm being caused, the risk of harm to more Tasmanians and there being no redeeming features of conversion practices, our hope is that self-interest, sectional interests and the wishes of constituents should be laid to one side.

Finally, we are attentive to the words of Pope Francis:

Let us care for those who suffer and are alone, perhaps marginalized and cast aside. With the love for one another that Christ the Lord bestows on us……let us tend the wounds of solitude and isolation. In this way, we will cooperate in combating the culture of individualism, indifference and waste, and enable the growth of a culture of tenderness and compassion.[7]

[7] Message of His Holiness Pope Francis, xxxii World Day Of The Sick, 11 February 2024
https://www.vatican.va/content/francesco/en/messages/sick/documents/20240110-giornata-malato.html

Concerned Catholics Tasmania

Who are we?

Our organisation comprises about 175 members with about a further 125 associates. Our members and associates are Catholic faithful. While our members are primarily Catholic lay people, Catholic priests and religious sisters and brothers are also members.

Our context

There has emerged in the Archdiocese of Hobart a recognition that the human dignity, capability and capacity of the faithful needs to be more fully engaged in building a truly collaborative and synodal Church. The social teachings of subsidiarity and solidarity provide the essential framework for such change.

The findings of the Royal Commission into Institutional Responses to Child Sex Abuse, so far as they related to Church practice and governance, point to the need for profound system reform of the Church's governance and administration and clerical culture. Throughout the hearings, the lack of transparency and accountability, the absence or limitations of competent lay participation and leadership, and a culture of secrecy and non-disclosure were shown to be characteristic of Church administration and governance. Such behaviours are inconsistent with the Church's social teaching with its emphasis on human dignity, solidarity and subsidiarity.

Vision

Our vision is for an inclusive Church which welcomes all in the spirit of the Gospels, and in which the talents, gifts and wisdom of all Catholics, female and male, whether lay, religious or ordained, contribute at every level of participation and decision making in the Catholic Church in Australia.

As Canon Law itself clearly expresses: *"The Christian faithful have the right and even, at times, the duty to manifest to the sacred pastors their opinion on matters which pertain to the good of the Church and to make their opinion known to the rest of the Christian faithful."* (Canon 212.3)

Mission

We are committed to ensuring Catholic lay people in the Archdiocese of Hobart have an effective role and voice in its administration and direction, and an effective means of providing support to one another as we work collaboratively to carry out the mission of our Church.

Contact details

Please use https://www.concernedcatholicstasmania.org/contact-us