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The Committee Secretary
Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee
Parliament House
George Street
BRISBANE QLD 4000

By Email only: health@parliament.qld.gov.au

Dear Committee Secretary

Re: Health Legislation Amendment Bill 2019

The LGBTI Legal Service Inc. ('the Service') is a non-for-profit community legal centre that began operation on 7 July 2010, and was officially launched on 1 December 2010 by former Justice of the High Court of Australia, the Hon Michael Kirby AC CMG. The Service recognises the difficulties faced by the lesbian, gay, bisexual, transgender and intersex ('LGBTI') community and seeks to assist the Queensland LGBTI community to gain access to justice. The Service provides legal assistance across a broad range of legal areas such as criminal, family, domestic violence, employment and discrimination law. The Service also has an active Law Reform division that seeks to advocate for LGBTI-inclusive law reform and the protection of human rights in Australia.

The Service welcomes the opportunity to make a submission to the Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee on the proposed *Health Legislation Amendment Bill 2019* ('the Bill').

Due to the nature of our organisation and the clients to whom we provide assistance, the focus of this submission will be on clause 28 – the proposed insertion of a new chapter 5B within the *Public Health Act 2005* (Qld). The Service supports and welcomes legislative reform prohibiting the practice of conversion therapy by health practitioners in Queensland and makes the following comments.

Background

Conversion therapy encompasses practices that are underpinned by the belief that the LGBTI community suffers from 'sexual brokenness', as sexual orientation and gender identity are viewed as being able to be cured, eliminated or suppressed. Such practices seek to achieve this through running 'ex-gay' camps, exorcisms, group therapy, and psychiatric 'treatments'. While opposition towards the LGBTI community was evident from at least the 1920s through extreme medical interventions, 'reorientation' efforts through conversion therapy is commonly believed to have gained momentum in Australia during the 1970s. However, advancements in medical understanding and ethics in the 1980s led to the rejection of these practices and the denial that the LGBTI community could be 'cured', more specifically that they did not 'need' to be cured. There is now widespread condemnation from the medical community in Australia and overseas for conversion therapies and practices, including from such organisations as the Australian Medical Association ('AMA'), Australian Counselling Association, Australian Psychological Society, World Health Organisation and World Psychiatric Association.

In 2018 the President of the AMA, Dr Tony Bartone, described these practices as 'archaic', 'not based on any research' and 'only associated with long-term harm to the patients involved'.¹ Indeed, the AMA has publicly condemned conversion therapy practices for a number of years, with a 2002 position statement stating that the organisation opposes:²

'...the use of "reparative" or "conversion" therapy that is based upon the assumption that homosexuality is a mental disorder and that the patient should change his or her sexual orientation.'

Nonetheless, conversion therapy practices continue to exist in Australia today with around ten organisations known to be still operating, including at least two providing services in Queensland. Such practices are often offered by unregulated health practitioners with modern conversion therapy practices seeking to present as more 'ethical' and include aversion therapy, counselling, psychotherapy, support groups, and exorcisms. Further, conversion therapy was once often referred to as 'gay conversion therapy', but modern manifestations of such practices also target the suppression of the gender identities of transgender and gender diverse people within the community. Despite the majority of leading medical organisations rejecting their utility, such practices continue to operate causing significant and long-lasting trauma and mental health impacts to often vulnerable members of the LGBTI community.

From a legal perspective, there are no equivalent legislative prohibitions against conversion therapy in any of the states in Australia, although Victoria is considering further legislative options after implementing legislation that provides improved complaints mechanisms against health care practitioners who conduct conversion therapy or practices. Only a handful of overseas jurisdictions have enacted legislative bans on the practice of conversion therapy including Malta, Taiwan, Brazil and several states in the United States, while others including Germany, New Zealand and France are in the process of implementing legislative bans. There is also now case law from the United States that found conversion therapy practices through their guarantee of 'eliminating' homosexuality was unlawful and in breach of consumer protections.³ However, this approach fails to deal with the psychological harm caused by conversion therapy practices.

The Bill

The purpose of the ban on conversion therapy according to the Explanatory Notes of the Bill is twofold. Firstly, it attempts to 'protect the Queensland LGBTI community from the harm caused by conversion therapy'. Secondly, and of vital importance, is its attempt to 'send a strong message that being a LGBTI person is not a disorder that requires treatment or correction'. We commend the Government for identifying these two separate, but overlapping, purposes of such a ban, which highlights the need to create a societal change through the strong message of legislative prohibition towards such practices.

The inclusion of heightened penalties for health providers carrying out conversion therapy on vulnerable persons under the proposed section 213H(1)(a) reflects the recommendations of the Ending Sexual Orientation Conversion Therapy Roundtable, and further deters such practices against those members of the LGBTI community who are especially susceptible to the harms caused by conversion therapy. It is widely known that the LGBTI community suffers from significant mental health issues, high rates of

¹ Australian Medical Association, *No Place for Conversion Therapy* (online at 4 September 2018) <<https://ama.com.au/ausmed/no-place-conversion-therapy>>.

² Australian Medical Association, *Position Statement 2002: Sexual Diversity and Gender Identity* <https://ama.com.au/sites/default/files/documents/Sexual_Diversity_and_Gender_Identity.doc>.

³ *Ferguson v Jews Offering New Alternatives for Healing*, No L-5473-12 (NJ Super Ct Law Div, 2015).

suicide and persistent social isolation and exclusion, which can be made significantly worse by conversion therapy which manipulates those who are subjected to it and provides individuals with false and harmful promises of being 'cured' of their perceived differences. As such, the Service strongly supports the inclusion of heightened protections for children and those with impaired capacity due to their increased vulnerability and inability to understand the harmful services being offered.

The Service also supports the inclusion of the exclusion under the proposed section 213F(3) of treatments to be carried out by health practitioners that they believe in their professional view to be necessary to ensure proper provision of health services or comply with their professional obligations. This will not operate as a 'carve-out' from the prohibition on conversion therapy, as it is evident that conversion therapy will not be covered due to them being widely discredited by health professionals. Further, the inclusion of section 213F(2) provides necessary protections for both health practitioners and individuals who undergo gender affirmation procedures, diagnoses or other therapeutic procedures.

Future reform and non-legislative activities

We strongly encourage that this legislation is supported by increased opportunities for collaboration with other organisations and institutions to provide vital supports to survivors of conversion therapy and its associated practices. Moreover, we note that the proposed Bill has a specific focus on health practitioners, despite both religious institutions and health practitioners continuing to conduct conversion therapy and practices. As such, we encourage the Government to consider that further non-legislative activities focus on improving societal awareness of the harms caused by these practices and dissuade religious bodies from carrying out activities that attempts to suppress or eliminate same-sex attraction or realisation of the gender identity of individuals. The enactment of this Bill will hopefully send a clear message to the wider community of the detrimental harm such practices cause to the Queensland LGBTI community and that identifying as LGBTI is not a disorder or illness needing to be 'cured'. We recommend greater funding to be allocated to provide specialised support to survivors to assist in their recovery from their experiences during undergoing conversion therapy practices.

Finally, as discussed above, any legislative or non-legislative reforms in this area should be mindful to not detrimentally affect vulnerable members of the LGBTI community that the Bill attempts to highlight as particularly susceptible to these practices, such as children and those with a disability. The Service endorses the purpose of the Bill to 'send a message to the community' with reforms in this area needing to be finely balanced against the potential unintended consequence of driving these practices further underground. Nonetheless, the proposed Bill is drafted so as to directly target health care practitioners offering these services and its penalties are clear and will hopefully act as a strong deterrent. The proposed Bill goes beyond merely penalising providers of conversion therapy, by identifying and denouncing the psychological harm caused by these damaging practices.

This submission was prepared by Mr Alex Ladd at the Service with background research conducted by Ms Olivia Roney and Ms Sarah McCutcheon. For further information please contact Ms Renea Hart on

Yours faithfully



Renea Hart
Principal Solicitor | LGBTI Legal Service Inc.

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