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To: health@parliament.qld.gov.au

Submission to Health, Communities, Disability Services and Domestic and Family Violence
Prevention Committee

Health Legislation Amendment Bill 2019, Chapter 5B Conversion therapies

Dear Committee Members,

I have serious concerns regarding the proposed insertion of chapter 5B into the Public Health Act 2005. I would like to argue that the Department has presented its case for this legislative change in a way that makes it look seriously flawed in its substance as well as in its procedure. As can be gleaned from the supporting documents, the Department is entering new legal territory in international comparison, which may demand special judiciousness in articulating and communicating this undertaking. What is more, the impact of such legislation regarding the targeted sections of the population and the population at large should be given careful consideration. I claim that the required cautiousness and diligence is quite frankly missing from what has been made known to the public so far. Instead, at closer inspection, the Department, with this project, gives the impression to have been co-opted into the service of a way of reasoning and governance that is being pushed against factual knowledge and common experience.

The way in which the government has promoted the legislative process so far betray a great deal of tendentiousness. It appears to have been adapted directly out of a handbook for LGBT advocacy¹, which in the chapter titled ‘Good practices for NGO advocacy’, lists “certain techniques that emerge as being effective in progressing trans rights” (p.18). In other words the Department, until now, can be seen as having been acting more on behalf of certain interest groups rather than engaging in the formation of public opinion and public will. Most of the techniques in the above mentioned handbook can be found in the legislative process at this stage:

- “De-medicalise the campaign”: As evidenced by the presentation in the media, there is no line of reasoning for the proposed law. Its proposition largely builds on moral outrage, rather than providing clear evidence for the case being put forward. In particular, long outdated brutal methods of conversion are pulled into the picture, while the problematic intervention of affirmation, which is a ‘medical’ one that can ultimately lead to lifelong severe physical consequences has been suppressed.
- “Use case studies of real people”: Acknowledging the distress and suffering of conversion therapy survivors is one thing. An entirely different thing is it to instrumentalise the lives of people to push a certain agenda. Actual suffering and the evoked empathy is being used in

¹ Only adults? Good practices in legal gender recognition for youth a report on the current state of laws and NGO advocacy in eight countries in Europe, With A Focus On Rights Of Young People. Thomson Reuters Foundation, November 2019 https://www.iglyo.com/wp-content/uploads/2019/11/IGLYO_v3-1.pdf

order to replace emotion for rational elaboration; everyone is solicited to believe: this shall never happen again, this law is urgent and overdue.

- “Use human rights as a campaign point”: Apart from the Explanatory Notes, human rights have not been used in what has been communicated so far by the Department. Yet, the department claims in this document² that the United Nations General Assembly condemned conversion therapy, hinting at a majority consensus among countries. In fact though, “sexual orientation and gender identity” are rather a contentious matter within the UN and they are not part of any treaty obligation under international law. The report³ referred to is by a UN official unit, and does not unequivocally support the proposed legislation, since “gender reassignment”, “when forced or otherwise involuntary, breach the prohibition on torture and ill-treatment” (p.11). This could be the case when minors undergo treatment while not having the capacity of giving informed consent.
- “Tie your campaign to more popular reform”: It is obvious that the ban on conversion therapy has entered the proceedings within a much larger package that is concerned with administrative reforms that are far less likely to be contentious. If something is a rather diminutive item on the agenda, less attention will be given to the details, and its relevance and impact.
- “Avoid excessive press coverage and exposure”: A media release by the Department relating to the reading of the bill is unavailable. Most reports⁴ seem to replicate a news dispatch from AAP only. More concerning however is that all reports merely focus on gay conversion therapy, while disregarding the far more current issue of gender affirmation.

The insertion of Chapter 5B Conversion into the Public Health Act 2005 is titled ‘Conversion therapies’. A dictionary definition of conversion reads: an event that results in a transformation; synonyms are, e.g., transition, changeover, rebirth. Change efforts take place both in the cases of sexual orientation and gender identity. Undeniably, the transition that trans people like to accomplish may equally be called also conversion, even more so since it encompasses often the entire person, including the physical makeup through drastic medical interventions. Yet, by means of a conceptual back-flip, for the Department, this conversion is not a conversion. This conjuration is required to establish one form of conversion as illegal and punishable, whereas the other one is highly desirable, and hence legally mandated.

Regarding the former, i.e., conversion therapy to alter sexual orientation, it has not been established that it is actually an immediate threat to the well-being of people that would firmly justify its

2 Health Legislation Amendment Bill 2019, Explanatory Notes, p.16

3 Discrimination and violence against individuals based on their sexual orientation and gender identity : report of the Office of the United Nations High Commissioner for Human Rights. May 2015
https://www.un.org/en/ga/search/view_doc.asp?symbol=A/HRC/29/23&referer=/english/&Lang=E

4 Queensland to outlaw 'appalling' gay conversion therapy <https://www.sbs.com.au/news/queensland-to-outlaw-appalling-gay-conversion-therapy>

'You're not broken': Gay conversion therapy to be outlawed in Queensland

<https://www.brisbanetimes.com.au/politics/queensland/you-re-not-broken-gay-conversion-therapy-to-be-outlawed-in-queensland-20191128-p53f0u.html>

Queensland Government introduces conversion therapy ban <https://csa.edu.au/queensland-government-introduces-conversion-therapy-ban/>

Qld to outlaw 'gay conversion therapy' <https://www.thecourier.com.au/story/6517365/qld-to-outlaw-gay-conversion-therapy/>

Queensland Government to ban 'gay conversion therapy' <https://qnews.com.au/queensland-government-to-ban-gay-conversion-therapy/>

Qld to outlaw 'gay conversion therapy' <https://www.theadvocate.com.au/story/6517365/qld-to-outlaw-gay-conversion-therapy/?cs=7>

Queensland could join Victoria in banning gay conversion therapy
<https://www.skynews.com.au/details/5776324193001>

incrimination. This seems to have been acknowledged already by the proponents/lobbyists for a ban on conversion therapy. Apart from the suspicion that there are clandestine structures:

“While most formal ex-gay/ex-trans/conversion organisations have closed down, the beliefs and ideology that formed the basis of the movement still exist in the form of non-therapeutic, underground conversion practices.”⁵

any hard evidence appears to be missing, as “[t]here are no studies of the prevalence of conversion therapy in contemporary Australia”⁶, and moreover, admittedly it is a fact that “there is scant information on religious conversion therapy in Australia other than in Protestant contexts”⁷. Thus, the spectre of present-day faith based conversion therapy is called upon as a bogeyman in order to justify heavy penalties imposed on those practitioners who are not aligned with unconditionally promoting the ‘affirmation’ called inversion of ‘gender identity’.

The second definition provided in the Bill is for ‘gender identity’. Through the definition of ‘gender identity’, the Department seeks to establish this assumed property as a good demanding special legal protection. This is extremely problematic when considering the social implications of this legislative move. The concept of gender identity is completely dependent on the articulation of the interests of a particular group of people. Without the questioning of sex as a biological determinant of being human, as well as the ensuing legal category, the words ‘gender identity’ would be absolutely pointless. Legislatures that perform the linguistic turn promoted by this particular group, demonstrate in this way that they identify unambiguously with the goals, whatever they maybe, of this group. The Department evidences its commitment to a particular interest by feeling obliged to provide its very own definition in “213G Meaning of gender identity”. The category of gender identity as an “internal and individual experience” is completely subjective and by being based on self-awareness and presentation mutable and only partly verifiable. Moreover, the promoters of this construct, transgender people, are keen to attest to its encompassing a great diversity.

“Gender identity refers to a person’s experience of their own gender. Transgender people have a gender identity that is different from the sex that they were assigned at birth. A transgender or trans person may identify as a man, woman, transman, transwoman, as a non-binary person, and with other terms such as hijra, third gender, two-spirit, travesti, fa’afafine, genderqueer, transpinoy, muxe, waria and meti. Gender identity is different from sexual orientation. Trans people may have any sexual orientation, including heterosexual, homosexual, bisexual and asexual.”⁸

Hence, gender identity is not a fixed characteristic of a person, as experiences may well change over a lifetime. What is more, it encompasses a plethora of manifestations. It construes something that may well be entirely fictional as a legal good that is beyond doubt. The mutability of gender identity has hence already been paralleled by legislation (e.g., the self-declaration laws in Victoria and Tasmania) which makes it possible that gender identity can be changed ad libitum. It is hard to imagine that malleable, mutable properties can define a special group that needs protection, while thus making possible that everyone can join. The consequences of legislation based on taking care of very personal proclivities are that at its inception it already equals a solicitation for abuse.

The introduction of gender identity into the terminology equals an espousal of fluidity which alters legal discourse at large and undermines the stability of the law. Currently, there is an alarming

5 SOGICE survivor statement, p.4 <http://socesurvivors.com.au/>

6 Preventing harm, promoting justice, p.16 <https://www.hrlc.org.au/reports/preventing-harm>

7 Ibid, p.15

8 Transgender. United Nations Free & Equal. United Nations, Human Rights, Office of the High Commissioner, 2017, p.1 <https://www.unfe.org/wp-content/uploads/2017/05/UNFE-Transgender.pdf>

increase in the transitioning of minors in a range of countries, while simultaneously, this practice is being subjected increasingly to scrutiny. Following hastily, and by that lending the force of the law to a questionable social trend will impinge people's lives in the future. It appears that the effects of the bill on individuals and society at large deserve more attention, especially as its passing would remove the issue from further expert deliberations, and by that ignore the risk of turning out to be to the detriment of the group meant to be guarded by the law.

The proposed insertion may be regarded as intrinsically flawed, both in the way it has been construed and promoted; it is pushed forward by virtue signalling on the one hand and the threat of draconian penalties on the other. To prevent harm, especially to minors, this project needs to be abandoned as long as no other options have been explored thoroughly. Though the part regarding religious conversion treatment appears to be less problematic, as it addresses a historical phenomenon, it nevertheless impacts on how governments define their relations to faith-based communities in general.

Sincerely,

Helmut Klaus