



AASW(Qld) submission to the Queensland Government Health Legislation Amendment Bill 2019 – Prohibition of conversion therapy

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Acknowledgement

This paper was prepared jointly by the AASW (Qld Branch) Social Policy and Advocacy Sub-Committee and members.

Recommendations

1. The term health service provider more explicitly includes social workers and other non-regulated professionals such as counsellors.
2. That the Queensland Government work towards registration of social workers to ensure the safety and protection of all people who use social work services.
3. That the language in Section 213F (2) (a) and (b) be changed to reflect more affirming terminology, that is, using the words “gender affirmation” rather than gender transition.
4. That Section 213G meaning of *gender identity*, be expanded to clearly articulate an expanded set of definitions that include the following; gender identity, gender expression, sexual orientation and sex as per the accepted definitions outlined.
5. The AASW Qld Branch endorses increased penalties for offences against ‘vulnerable persons.’
6. The AASW Qld Branch recommends amendment of the *Criminal Code* [1995] to specifically address, prohibit, criminalise and punish the provision of ‘conversion therapies’ by an individual or organisation.
7. The AASW Qld Branch recommends broadening the legislative protections beyond the health sector to protect the human rights, health and wellbeing of individuals.
8. The AASW Qld Branch recommends that associated documentation and resource material developed be inclusive of the contemporary and expanded definition that recognises the diversity involved, “LGBTIQPA+ brotherboy and sistergirl”.

Introduction

Who we are

The Australian Association of Social Workers (AASW) is the professional body representing more than 12,000 social workers throughout Australia, and with 2100 in Queensland. We set the benchmark for professional education and practice in social work, and advocate on matters of human rights, social inclusion, and discrimination.

The social work profession

Social work is a tertiary-qualified profession recognised nationally and internationally that supports individuals, families, groups and communities to improve their wellbeing. Principles of social justice, human rights, collective responsibility and respect for diversity are central to the profession and are underpinned by theories of social work, social sciences, humanities and Indigenous knowledges. Social workers consider the relationship between biological, psychological, social and cultural factors and how they impact on a person's health and development. Accordingly, social workers maintain a dual focus in both assisting with and improving human wellbeing and identifying and addressing any external issues (known as systemic or structural issues) that may have a negative impact, such as inequality, injustice and discrimination. Core to social work is the commitment to values of human rights, social justice and professional integrity, which are at the heart of this proposed legislative change.

Submission

We thank the Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee (the Committee) for the opportunity to contribute to their inquiry on the Health Legislation Amendment Bill 2019. This submission relates specifically to the sections regarding "conversion therapy" (Clause 28).

The AASW Qld Branch commends the Queensland Government on their commitment to putting an end to so called "conversion therapy". As highlighted in the Explanatory Notes and elsewhere, conversion therapy is harmful, unethical and a breach of fundamental human rights that 'all human beings are born free and equal in dignity and rights'¹.

As argued by Jones, Brown, Carnie, Fletcher and Leonard (2018) "*All Australian health authorities, including the Christian Counsellors Association of Australia, now 'strongly oppose any form of mental health practice that treats homosexuality as a disorder, or seeks to change a person's sexual orientation'*" (p.3)². The evidence is overwhelming in recognising that 'conversion therapy' is harmful, ineffectual and unethical.³

¹ See article 1, 2, 3, 5 and 30 of the UN Declaration of Human Rights
https://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf.

² Jones, T, Brown, A, Carnie, L, Fletcher, G, & Leonard, W. (2018). *Preventing Harm, Promoting Justice: Responding to LGBT Conversion Therapy in Australia*. Melbourne: GLHV@ARCSHS and the Human Rights Law Centre. ([link](#))

³ McDermott, W. & Emery, L. L. P. (2018) *The pernicious myth of conversion therapy: How love in action perpetrated a fraud on America*. <http://www.nclrights.org/wp-content/uploads/2018/11/Mattachine-Society-Conversion-Therapy-White-Paper-Redacted.pdf>.

Response to Specific Sections

Section 213E Definitions for chapter

In relation to Section 213E, the legislation refers to 'health service provider' as specified in the *Health Ombudsman Act 2013*, section 8. Social work, as with some other professions, are not currently registered in Australia. It is unclear if Section 8 (a) (ii) another individual who provides a health service or (b) an entity, other than an individual who provides a health service, would include social workers. The lack of registration of social workers in Queensland and Australia is thus problematic. We therefore recommend the following:

Recommendations

1. The term health service provider more explicitly includes social workers and other non-regulated professionals such as counsellors.
2. That the Queensland Government work towards registration of social workers to ensure the safety and protection of all people who use social work services.

Section 213F Meaning of *conversion therapy*

In relation to Section 213F (2) (a) and (b) we recommend that the language be changed to reflect more affirming terminology, that is, using the words "gender affirmation" rather than gender transition.

Doing so recognises that many transgender individuals do not perceive themselves to be changing from one gender to another, but rather that they are able to start living to their true inner sense of gender identity. The terminology 'gender affirmation' has been used interchangeably with gender transition, however, recent academic research favours gender affirmation as a more accurate representation of what is happening for the person, and this is also consistent with anecdotal feedback from transgender individuals in the community.⁴

Recommendation

3. That the language in Section 213F (2) (a) and (b) be changed to reflect more affirming terminology, that is, using the words "gender affirmation" rather than gender transition.

⁴ The Fenway Institute. (2010). *Glossary of gender and transgender terms in the Fenway Institute* (Ed.), (pp. 3-4). Boston, Massachusetts, United States: The Fenway Organisation https://fenwayhealth.org/documents/the-fenway-institute/handouts/Handout_7C_Glossary_of_Gender_and_Transgender_Terms__fi.pdf
World Health Organisation. (2019). *WHO/Europe brief – transgender health in the context of ICD-11*. Retrieved from <http://www.euro.who.int/en/health-topics/health-determinants/gender/gender-definitions/who-europe-brief-transgender-health-in-the-context-of-icd-11>.

Section 213G Meaning of *gender identity*

The Australian Human Rights Commission⁵ outlines that terminology can have a profound impact on a person. Using incorrect terminology can disempower and diminish a person's sense of self; however, it also can be used in a strengths-based way to empower people when appropriate terminology is used and when used appropriately.

In relation to Section 213G meaning of *gender identity*, we recommend that terminology clearly articulates and expands to include the following; Gender identity, gender expression, sexual orientation and sex. The *Sex Discrimination Amendment (Sexual Orientation, Gender Identity and Intersex Status) Act 2013*⁶ already provides the following definitions of gender identity and sexual orientation that we believe would be helpful:

- **“Gender identity** means the gender-related identity, appearance or mannerisms or other gender-related characteristics of a person (whether by way of medical intervention or not), with or without regard to the person's designated sex at birth”⁷.
- **“Sexual orientation** means a person's sexual orientation towards: (a) persons of the same sex; or (b) persons of a different sex; or (c) persons of the same sex and persons of a different sex”.

Gender expression and gender identity may often be perceived and assumed as the same thing, yet, they are different and exist on a continuum. **Gender identity** is a person's “*deeply held internal and individual sense of gender*” whereas, “**gender expression** means the way in which you present (through your actions, clothing, and demeanour) and how those presentations are viewed based on social expectations”.

- **“Sex** is the term used to refer to a person's biological characteristics”.⁸

By broadening the terminology and definitions used in this legislation, it provides inclusive language that gives “all people the opportunity to make reasonable health choices”.⁹

Recommendation

4. That Section 213G meaning of *gender identity*, be expanded to clearly articulate an expanded set of definitions that include the following; gender identity, gender expression, sexual orientation and sex as per the accepted definitions outlined.

⁵ <https://www.humanrights.gov.au/our-work/section-3-note-terminology-addressing-sexual-orientation-and-sex-andor-gender-identity>

⁶ *Australian Human Rights Commission article & terminology for Gender Identity and Sexual Orientation.*

<https://www.humanrights.gov.au/our-work/section-3-note-terminology-addressing-sexual-orientation-and-sex-andor-gender-identity>.

⁷ <https://www.legislation.gov.au/Details/C2013A00098>.

⁸ <https://www.humanrights.gov.au/our-work/section-3-note-terminology-addressing-sexual-orientation-and-sex-andor-gender-identity>; The Gender Bread Person v4, <https://www.genderbread.org/resource/genderbread-person-v4-0-poster>.

⁹ https://lgbtihealth.org.au/sites/default/files/Alliance%20Health%20Information%20Sheet%20Inclusive%20Language%20Guide%20on%20Intersex%2C%20Trans%20and%20Gender%20Diversity_0.pdf

Section 213H Prohibition of conversion therapy: Proposed section 213H

Part 5, section 28 of the Health Legislation Amendment Bill 2019

Part 5 seeks to amend the *Public Health Act 2005*, by inserting a new chapter 5B to address “conversion therapies”. The Proposed section 213H – prohibition of “conversion therapies” impacts the conduct of ‘a health service provider’ (s. 213H(1)), and establishes a maximum penalty for ‘persons (otherwise)’ and ‘vulnerable persons’.

The AASW Qld Branch acknowledges the terms for persons are defined and maximum penalties are consistent with classes of persons and other legislation.

Recommendation

5. The AASW Qld Branch endorses increased penalties for offences against ‘vulnerable persons.’

Inclusive legislation that provides protection of the rights of all people

The AASW Qld Branch commends the Queensland Government for introducing this important legislation that recognises the impact on an individual’s physical, emotional, psychological, social and economic wellbeing of being constructed as ‘broken’, ‘othered’ and in need of ‘conversion to right them’.

As mentioned earlier in relation to proposed section 213E, the meaning of ‘health service provider’, as defined by section 8 of the *Health Ombudsman Act 2013*, is limited to individuals and entities that provide health services. Therefore, this amendment is limited to regulating conduct in the context of health services, as defined.

The Explanatory Notes establish that the Ending Sexual Orientation Conversion Therapy Roundtable (Roundtable) recommended “*consideration be given to protecting children, young people and vulnerable groups from these [conversion therapy] practices.*”¹⁰ The AASW notes, the Bill (proposed section 213H) extends this consideration to the conduct of ‘a health service provider’. Whilst this is relevant for the purposes of this amendment, the AASW notes including a provision in the *Criminal Code* [1995] not limiting this conduct to a class of persons, would give further and greater effect to the Roundtable’s recommendation.

In this context, the AASW notes the historical proliferation of ‘conversion therapies’ provided by individuals and organisations as opposed to ‘a health service provider’. Limiting the scope of proposed section 213H to ‘a health service provider’ does not address the provision of conversion therapy in other non-health contexts, where historically, the conduct has been endorsed, promoted and widespread.

Further, the Explanatory Notes state “[t]he objective of amendments to the *Public Health Act* prohibiting conversion therapy is to protect the Queensland LGBTIQ [sic] community from the harm caused by conversion therapy, and to send a strong message that being a LGBTIQ [sic] person is not a disorder that requires treatment or correction.”¹¹ Therefore, in acknowledging the specific scope of

¹⁰ Explanatory Notes, *Health Legislation Amendment Bill 2019*, p. 5.

¹¹ Explanatory Notes, *Health Legislation Amendment Bill 2019*, p. 4.

proposed section 213H, the AASW recommends amendment of the *Criminal Code* [1995] to specifically address, prohibit, criminalise and punish the provision of 'conversion therapies' by an individual or organisation attempting to do so under the misapprehension that a person may benefit from the proposed intervention.

Recommendation

6. The AASW Qld Branch recommends amendment of the *Criminal Code* [1995] to specifically address, prohibit, criminalise and punish the provision of 'conversion therapies' by an individual or organisation.

Human rights

Extending the legislation beyond the health sector is necessary if we are to truly meet our human rights obligations under both the United Nations (UN) Conventions and the Queensland Human Rights Bill. The report by Jones and colleagues (2018)¹² highlighted that the UN Independent Expert on protection against violence and discrimination based on sexual orientation and gender (UN SOGI Expert) recommended that States ban conversion therapy, which extends beyond health care professionals. The current legislation amendment does not cover the breadth of services and organisation that may engage in this practice, which includes religious and spiritual advisors, along with others, thus providing a loophole. We recognize the complexity of introducing legislation that intersects with religious beliefs and freedom and conversion practices. However, if we are to fulfil our obligations to all our citizens as specified by the UN International Covenant on Civil and Political Rights (ICCPR), recognizing that "conversion therapy" is a violation of this and indeed is harmful and a form of torture¹³ this needs to occur. Article 18 of the ICCPR provides guidance on this, stating that "manifesting a religious belief in worship, observance, practice or teaching can only be limited where those limitations are 'prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others'"¹⁴ (Jones et al., 2018, p. 47).

Limiting the legislation to the health sector excludes non-registered professions, which includes social workers, unregistered mental health practitioners, and others such as counsellors, and spiritual advisors. The legislation needs to provide protection that includes whether this 'service' is provided for a fee or no fee, recognising that people in positions of power or authority have potential significant influence and may not charge a fee, for example a spiritual mentor who recommends or imposes this practice on an individual. Jones and colleagues recommended the Victorian State Government introduce legislation that specifically prohibits conversion activities that "prohibit any conduct by 'professionals' (defined to include social workers, unregistered and registered health practitioners, teachers and more) aimed at 'changing', 'suppressing', 'curing', 'healing', or 'repairing' a person's sexual orientation or gender identity of any adult" (2018, p.67). We argue that this supports our

¹² Jones et al., (2018). *Preventing harm, promoting justice: Responding to LGBT conversion therapy in Australia*. © GLHV@ARCSHS, La Trobe University & Human Rights Law Centre 2018. <https://static1.squarespace.com/static/580025f66b8f5b2dabbe4291/t/5bd78764eef1a1ba57990efe/1540851637658/LGBT+conversion+therapy+in+Australia+v2.pdf>.

¹³ *The Committee against Torture, in Ecuador findings from the seventh periodic review of Ecuador*, UN Doc CAT/C/ECU/7 (11 January 2017) [49]–[50].

¹⁴ *International Covenant on Civil and Political Rights*, opened for signature 19 December 1966, 999 UNTS 171 (entered into force 23 March 1976) art 18(3).

recommendation to expand the scope of legislative protections for people who can be subject to such practices.

We recommend that consideration be given to other international best practice examples, which encompass:

- California¹⁵ has introduced legislation that specifically considers conversion practices as fraudulent business practice. If passed, this extends the scope to any person who attempts to engage in a transactional relationship, which would cover unregistered professions, along with others who practice this. Hawaii has also included elements of consumer protection and commerce, in order to close the loophole for non-health services. However, this does not capture those who provide this practice in an unpaid capacity.
- The Irish context has proposed legislation that applies to “*any person performing or offering to perform conversion therapy on any person*” (Jones et al., 2018, p. 51).
- The proposed legislation in Malta is also recognized as being more expansive.¹⁶ Furthermore, Malta’s Affirmation of Sexual Orientation, Gender Identity and Gender Expression Act 2016 provides a preamble that explicitly states that it affirms “*all persons have a sexual orientation, a gender identity and a gender expression, and that no particular combination of these three characteristics constitute a disorder, disease, illness, deficiency, disability and, or shortcoming; and to prohibit conversion practices as a deceptive and harmful act or interventions against a persons’ sexual orientation, gender identity and, or gender expression*”.¹⁷

Recommendation

7. The AASW Qld Branch recommends broadening the legislative protections beyond the health sector to protect the human rights, health and wellbeing of individuals.

Doing so more fully recognises that sexual orientation or gender expression is not a disease or aberration and that any practices that attempt to “change, repress, and /or eliminate a person’s sexual orientation, gender identity and /or gender expression” is unlawful and unethical (Jones et al., 2018, p. 51). Furthermore, it would ensure alignment with the Queensland *Human Rights Bill, 2019*, in particular Part 1, Division 1 Sections 8 and 15, Division 2, Section 8; Part 2, Sections 11-14, Division 2, Sections 15, 16, 17, 20 in particular 20 (2) and 21¹⁸.

¹⁵ http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AB2943

¹⁶ ILGA Europe. (2017). *Annual review of the human rights situation of lesbian, gay, bisexual, trans and intersex people in Europe*. https://www.ilga-europe.org/sites/default/files/2017/full_annual_review.pdf.

¹⁷ <http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=12610&l=1>.

¹⁸ <https://www.parliament.qld.gov.au/Documents/TableOffice/TabledPapers/2018/5618T1767.pdf>.

Terminology

The AASW notes that in the Explanatory Notes the acronym LGBTIQ is used, which is not consistent with contemporary terminology of “LGBTIQPA+ brotherboy and sistergirl”. Appropriate and inclusive language is vital, as we continue to live in a cis gender and heteronormative world where those who do not fall into these categories are excluded and othered. Inclusive and respectful language that also educates the public is crucial in achieving cultural and social shifts that recognise the diversity of people and is inclusive rights of all our citizens.

We recognise that there has been a growing discussion about appropriate, inclusive and respectful language that captures the diversity of gender and sex, without specifying groups or introducing new categories to remain inclusive of the breadth of diversity. An international human rights discourse refers to SOGI, sexual orientation and gender identity¹⁹, used by Human Rights Watch and others²⁰. This shifts the language to *‘diverse sex, sexuality and gender or sex, sexuality and gender diversity’ (depending on usage)*²¹.

It is important that the Queensland Government remain abreast of the shifts and discussions about appropriate language to ensure that legislation, policies and services are inclusive and so leading the way in educating the community.

Recommendation

8. The AASW Qld Branch recommends that associated documentation and resource material developed be inclusive of the contemporary and expanded definition that recognises the diversity involved, “LGBTIQPA+ brotherboy and sistergirl”.

¹⁹ <http://theconversation.com/the-term-lgbti-confuses-desire-behaviour-and-identity-its-time-for-a-rethink-90175>.

²⁰ <https://www.hrw.org/video-photos/interactive/2019/09/23/sexual-orientation-gender-identity-country-profiles>.

²¹ <https://www.racgp.org.au/education/education-providers/curriculum/contextual-units/populations/sg16-sex,-sexuality,-gender-diversity-and-health>;
<https://schools.au.reachout.com/articles/gender-and-sexuality>

Conclusion

The AASW Qld Branch thanks the Queensland Government for the opportunity to contribute to this significant legislation and for its leadership in promoting the wellbeing and rights of all our citizens. We look forward to the opportunity to support the Government in the future with broadening the scope of legislative safeguards.



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