



Tasmanian Council of Social Service Inc.

Submission to the TLRI Inquiry into Sexual Orientation and Gender Identity Conversion Practices

January 2021



**INTEGRITY
COMPASSION
INFLUENCE**

About TasCOSS

TasCOSS' vision is for one Tasmania, free of poverty and inequality where everyone has the same opportunity. Our mission is two-fold: to act as the peak body for the community services industry in Tasmania; and to challenge and change the systems, attitudes and behaviours that create poverty, inequality and exclusion.

Our membership includes individuals and organisations active in the provision of community services to low-income Tasmanians living in vulnerable and disadvantaged circumstances. TasCOSS represents the interests of our members and their service users to government, regulators, the media and the public. Through our advocacy and policy development, we draw attention to the causes of poverty and disadvantage, and promote the adoption of effective solutions to address these issues.

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Introduction

Thank you for the opportunity to make a submission to the inquiry into Sexual Orientation and Gender Identity (SOGI) Conversion Practices in Tasmania.

TasCOSS advocates on behalf of Tasmanians on low-incomes who often live in vulnerable and disadvantaged circumstances. We advocate for public policy that values and respects the diversity of Tasmanians and makes a real difference to the lives of people who are experiencing vulnerability. Based on human rights principles, the expertise of our members and survivor advocates, and research and analysis of promising practice in Australia and elsewhere, we believe that sexual orientation and gender identity (SOGI) conversion practices breach human rights and can cause serious harm to survivors. We therefore welcome the current inquiry and support the introduction of legislation to ban these practices. This submission sets out the evidence through discussion of the following key issues:

- Definitions of conversion practices
- Conversion practices as a breach of human rights
- Lack of evidence of efficacy of conversion practices
- Evidence that conversion practices inflict harm, and
- Need to support survivors and educate the public.

TasCOSS notes that the Tasmanian Law Reform Institute (TLRI) Issues Paper invites responses about what legislative model should be adopted in Tasmania. We recommend that the TLRI incorporate the Sexual Orientation and Gender Identity Change Efforts (SOGICE) survivors and Brave Network recommendations for best practice legislation (see appendix).

Key Issues

1. Definition of conversion practices

Because we cannot identify the full range of conversion practices that occur in the community, TasCOSS supports the principles-based approach to regulation advocated by the TLRI:

At this stage, the TLRI notes its preference for a principles-based approach to regulation. A principles-based approach focuses on explaining an outcome that a law seeks to regulate or prevent. It avoids detailed rules and instead looks to broader norms or obligations that all people and actors should observe.¹

In light of this, TasCOSS acknowledges the SOGICE Survivor Statement definition of what practices are appropriately defined as conversion practices. The statement defines SOGI conversion practices as those driven by the following broad assertions:

- Humans are born with the potential to be heterosexual and cis-gendered
- LGBTQA+ people are experiencing “sexual and/or gender brokenness” or a disorder, often as a result of past trauma

¹ TLRI, 2020. [Sexual Orientation and Gender Identity Conversion Practices](#) (Issues Paper No 31, November 2020), 1.3.21 , p.12.

- Through certain practices LGBTQA+ people can change their sexual orientation/gender identity or achieve celibate status.²

The definition proposed by the TLRI suggests that SOGI conversion practices are based on the notion that non-conforming sexual orientation or gender identity is a “physical or psychological dysfunction”³. TasCOSS is aware of cases where “spiritual dysfunction” or possession has also been used to justify conversion practices.^{4,5,6} As such, TasCOSS would encourage the TLRI to consider including spiritual dysfunction in their definition in order to capture the broadest range of conversion practices.

With regard to the inclusion of “statements” in the TLRI definition of conversion practices, TasCOSS welcomes recognition that statements can form part of conversion practices and contribute to the encompassing conversion ideology to which many people find themselves exposed. We believe that statements which are part of ongoing inducements or advertisements to participate in conversion practices should be covered by Tasmanian legislation.

While the TLRI paper at 1.3.24 claims the proposed definition requires some continuity to those acts or statements, this is unclear in the proposed definition at 1.3.23. The TLRI could therefore consider including in its definition reference to “ongoing”, “sustained” or “continuing” acts, practices or statements that are aimed at change or suppression.⁷

Some critics of gender affirmation argue that affirming trans and gender diverse identities is a form of conversion away from being gay or lesbian. This is not based in any evidence, a fact recognised and reflected in definitional exclusions in the ACT and Victorian bills which ensure gender affirmation and support is not regarded as a conversion practice. TasCOSS is strongly of the belief that, as the SOGICE survivors and Brave Network recommends, any legislation should contain a strong affirmation of all LGBTQA+ people and avoid any potential ambiguity around gender affirmation as a conversion practice.

2. Arguments for banning SOGI conversion practices

TasCOSS recommends all SOGI conversion practices be banned for the following reasons:

a. SOGI conversion practices breach fundamental human rights.

TasCOSS believes that human rights are a fundamental underpinning of good governance, so a human rights lens is necessary when considering legislative and other responses to conversion practices.

Attempts to change or suppress an individual’s sexual orientation or gender identity are direct contraventions of a number of rights including rights to non-discrimination, bodily autonomy, privacy,

² SOGICE Survivors, 2020. [SOGICE Survivor Statement](#), written by survivors of Sexual Orientation & Gender Identity Change Efforts, and the LGBTQA+ Conversion movement.

³ TLRI, [SOGI Conversion Practices](#), 1.3.23, p. 13.

⁴ SMH, 2020. *‘It’s not easy to believe in a god when people tell you God doesn’t like us’*

⁵ ABC, 2018. *‘Treatments as torture: gay conversion therapy’s deep roots in Australia’*

⁶ See Illeuca, M. 2020. *‘Spirit possession: Perspectives on pastoral assessment and care’*

⁷ See for example the Maltese legislation: [Affirmation of Sexual Orientation, Gender Identity and Gender Expression Act 2016 \(Malta\)](#)

health, and free expression of one's sexual orientation and gender identity.⁸ A recent report for the United Nations Human Rights Commission stated that conversion practices are "by their very nature degrading, inhuman and cruel and create a significant risk of torture."⁹ When conversion practices are applied forcibly they can also mean a deprivation of liberty, and a breach of the prohibitions on torture and ill-treatment.¹⁰

Some human rights and faith communities have expressed concern that a prohibition on conversion practices is a threat to religious freedom, with some citing recent Victorian legislation as an example.¹¹ TasCOSS does not believe this legislation threatens religious freedom because it does not prohibit religious or spiritual activity, only those practices which seek to change or suppress an individual's sexual orientation or gender identity and cause harm or injury to that individual.

Nowhere in Australian law or in international human rights covenants does there exist an absolute right to act on religious conviction in any circumstance; the International Covenant on Civil and Political Rights, to which Australia is a signatory, recognises "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."¹² International human rights law seeks to ensure that individuals are subject to both freedom of, and freedom from discrimination based on, "religion or belief".¹³

b. In the absence of reputable evidence supporting underlying assumptions or demonstrating efficacy, informed consent to SOGI conversion practices is impossible.

At the heart of conversion practices sits the notion that non-conforming sexual orientations and gender identities are the result of a disorder which needs correcting. This has no basis in evidence. In recognition of this fact, the Australian Medical Association and the Australian Psychological Society offer position statements opposing SOGI conversion practices. Both statements affirm LGBTQA+ identities and counter the assumption that such identities are a manifestation of a broken or disordered individual.¹⁴ This is not a view restricted to medical professionals in Australia. The World Psychiatry Association notes in their position statement on conversion practices, "the provision of any intervention purporting to "treat" something that is not a disorder is wholly unethical."¹⁵

Nor is there evidence to support the claim that these practices work. A recent review by the Independent Expert Forensic Group concluded that there is "no credible scientific peer-reviewed studies that demonstrate that conversion therapy in any form is effective."¹⁶ The established inefficacy of conversion practices is the reason many jurisdictions have implemented bans. Indeed, Maltese

⁸ See for example Privacy: UNDHR - Article 12 and ICCPR, Article 17; Health - ICESCR, Article 12; [The Yogyakarta Principles plus 10](#), 2017.

⁹ OHCHR 2020. [Report on conversion therapy](#)

¹⁰ UDHR, Article 5. ICCPR, Article 7.

¹¹ See The Age, 2020. ['Gay conversion legislation puts Andrews on a collision course with the church'](#)

¹² The Religious Freedom Review: [Report of the Expert Panel](#), s 1.53.

¹³ UNGA, 1981. Res36/55, [Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief](#)

¹⁴ See [AMA position statement](#) and [APS position statement](#)

¹⁵ See [WPA position statement](#)

¹⁶ IFEG 2020. [Statement on Conversion Therapy](#), p.3.

legislation explicitly acknowledges that conversion practices are based on false and misleading claims, and are inherently “deceptive”.¹⁷

Given SOGI conversion practices are based on a false assumption of brokenness and their efficacy does not have any solid evidential base, TasCOSS agrees with survivor groups, such as SOGICE Survivors, that it is not possible for an individual to provide their informed consent to participate in these practices. TasCOSS therefore recommends that all SOGI conversion practices be banned, for adults as well as children, regardless of whether they are forced or purported to be consensual.

c. Evidence shows conversion practices are harmful to LGBTQA+ people and communities.

As the SOGICE Survivor Statement highlights, “the research, survivor testimonies and the opinions of all peak health bodies in Australia clearly show that conversion practices do not work and are responsible for causing significant harm.”¹⁸ This recognition of harm exists at the individual, local, national, and international level. The Independent Expert Forensic Group sets out a high-level view of many of the harms that conversion practices are known to cause:

“The injury caused by conversion therapy begins with the notion that an individual is sick, diseased, and abnormal due to their sexual orientation or gender identity and must therefore be treated. This starts a process of victimisation through conversion therapy. Individuals who have undergone the practice often experience a decrease in self-esteem, episodes of significant anxiety, depressive tendencies, depressive syndromes, social isolation, intimacy difficulties, self-hatred, sexual dysfunction, and suicidal thoughts. In many studies, the rates of suicidal ideation and suicide attempt are several times higher than in other lesbian, gay, bisexual, trans, and gender diverse populations who have not been exposed to conversion therapy.”¹⁹

The *Preventing Harm, Promoting Justice* report examining conversion practices in Australia expands on this list of harms, noting Australian survivors report “self-hatred, shame, loneliness, thoughts of suicide, problems with being touched or loved, sexual dysfunction, causing harm to those they love including partners and spouses, grief, loss of faith, loss of community, depression, ongoing mental health problems and economic disadvantage.”²⁰

In light of the extensive and grievous harms caused by conversion practices to both survivors and their communities, based on false assertions and exercised in contravention of basic rights and dignity, there should be no question of permitting the practices for any person in any form.

3. Survivors need support and greater awareness needs to be built in the community.

The clear evidence of harm also necessitates support for survivors. As well as enacting legislation banning the practice to prevent ongoing harms, the government must provide assistance to survivors to access the supports they require. In considering conversion practices legislation, Tasmania has an opportunity to also enact a support mechanism which ensures survivors are provided with the support they might require as a result of their exposure to conversion practices. The Federal Government’s

¹⁷ See [Maltese bill](#)

¹⁸ SOGICE Survivors, 2020. [SOGICE Survivor Statement](#), p.10.

¹⁹ IFEG statement. p.4.

²⁰ Jones, T, Brown, A, Carnie, L, Fletcher, G, & Leonard, W. [Preventing Harm, Promoting Justice: Responding to LGBT Conversion Therapy in Australia](#). Melbourne: GLHV@ARCSHS and the Human Rights Law Centre, 2018.

support program for people with eating disorders provides 40 Medicare subsidised psychology sessions and could provide a model to emulate.²¹ Fines resulting from the legislation could be directed into a support fund for survivors and, while this would be unlikely to cover total costs, it would be an important symbolic action.

Community awareness or education campaigns should also be parallel activities worth considering with the aim of educating the community of the inefficacy of the practices, combating harmful rhetoric and narratives in public statements, and tackling the discrimination and prejudice which sits at the heart of conversion practices. This would complement legislative efforts and help to reduce the attraction and impact of any practices which continue or are driven further underground following a ban.²²

Recommendations

TasCOSS recommends that:

- all SOGI conversion practices be banned, for adults as well as children, regardless of whether they are forced or not
- any legislation banning SOGI conversion incorporate the SOGICE survivors and Brave Network recommendations for best practice legislation
- any legislation contains a strong affirmation of all LGBTQA+ people and avoid any potential ambiguity around gender affirmation as a conversion practice
- any legislation includes provision of assistance to survivors to access the supports they require
- a ban be accompanied by a community education campaign which affirms LGBTQA+ people and highlights the harms and false claims of conversion practitioners

Conclusion

TasCOSS welcomes the review into Sexual Orientation and Gender Identity conversion practices. Conversion practices are clearly a breach of the fundamental human rights and the dignity of LGBTQA+ individuals. The practices are based on outdated assumptions, are ineffective, and can cause significant harm to individuals. It is clear that legislation should be enacted in Tasmania which affirms LGBTQA+ identities, bans conversion practices for all, and provides support to survivors. Doing so would ensure Tasmania meets its responsibility to ensure the safety, health, and wellbeing of its citizens and cement a culture of respect and acceptance for all Tasmanians.

²¹ Minister for Health, Media release: [Medicare access to life-saving treatment for people with eating disorders](#)

²² See [Preventing Harm, Promoting Justice](#), p. 65.

Appendix

SOGICE Survivors and Brave Network Recommendations

Successful conversion practices legislation must:

- Strongly affirm that LGBTQA+ people are not 'broken' or 'disordered'
- Ban practices in both formal (medical/psychology/counselling) and informal (including religious) settings, whether paid or unpaid
- Protect adults, children, and people with impaired agency, including prohibition of the removal of children from the jurisdiction for the purpose of conversion practices
- Target the false, misleading, and pseudoscientific fraudulent claims that drive conversion practices
- Focus on practitioners' intent to facilitate change or suppression of a person's orientation, gender identity or gender expression on the basis of pseudoscientific claims
- Cover advertising and promotion of paid or unpaid conversion practices, including promotion of false and misleading claims designed to generate demand
- Cover referrals from practitioners, whether in informal or formal contexts
- Establish a range of criminal and civil penalties
- Provide counselling and redress for survivors
- Provide investigative powers to a suitably advised body or commission, with scope for investigations to be initiated internally or as a response to complaints by third parties, not just by survivors, using strategies that prevent re-traumatisation