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Dear Dr Cumming

ALHR Supports Legislation Banning Conversion Therapy

Australian Lawyers for Human Rights (“**ALHR**”) is aware of the *Change or Suppression (Conversion) Practices Prohibition Bill 2020* (“**the Bill**”) currently before the Victorian Parliament, which would ban damaging LGBTIQ+ conversion practices in line with international human rights law standards.

ALHR strongly supports the Bill, which:

1. Prohibits a wide range of harmful practices informed by the view that sexual orientation and gender identity can or should be changed or suppressed and facilitates education and consent-based facilitation to end those practices.
2. Enables the Victorian Equal Opportunity and Human Rights Commission to investigate serious or systemic practices directed at changing or suppressing sexual orientation and gender identity.
3. Criminalises those practices that result in injury or serious injury, as well as advertising of conversion practices.
4. Introduces new protections for people born with intersex variations and non-binary people in anti-discrimination laws, and updates existing definitions of sexual orientation and gender identity.

What is “Conversion therapy”?

“Conversion therapy” is an umbrella term to describe interventions of a wide-ranging nature, all of which are premised on the belief that a person’s sexual orientation and gender identity, which includes gender expression, can and should be changed or suppressed.¹

The harms caused by conversion therapy are widely reported. In their article “Statement on conversion therapy”, the Independent Forensic Expert Group conclude that:

“All practices attempting conversion are inherently humiliating, demeaning and discriminatory. The combined effects of feeling powerless and extreme humiliation generate profound feelings of shame, guilt, self-disgust, and worthlessness, which can result in a damaged self-concept and enduring personality changes. The injury caused by practices of “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 victimization.”²

The effect of “conversion therapy” on individuals includes significant loss of self-esteem, anxiety, depressive syndrome, social isolation, intimacy difficulty, self-hatred, shame and guilt, sexual dysfunction, suicidal ideation and suicide attempts and symptoms of post-traumatic stress disorder, as well as often significant physical pain and suffering.³

Conversion Therapy - An International Human Rights Perspective

In May 2020, the Independent Expert on the protection of violence and discrimination based on sexual orientation and gender identity, Victor Madrigal-Borloz (“**the Independent Expert**”), presented his report to the Human Rights Council of the United Nations General Assembly entitled “Practices of so-called “conversion therapy”” (“**the Report**”). ALHR commends the Report to you, and has enclosed a copy for your reference with this letter.

In the Report, the Independent Expert made the following recommendations:

1. That States:
 - a. Ban the practices of “conversion therapy” as described in the present report, including by:

¹ “*Practices of so-called “conversion therapy”*”: Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity”, presented to Human Rights Council of the United Nations General Assembly, May 2020, page 4.

² Independent Forensic Expert Group, “Statement on Conversion Therapy”, Journal of Forensic and Legal Medicine, May 2020, Vol 72.

³ Shidlo, A., & Schroeder, M. (2002). Changing sexual orientation: A consumers' report. *Professional Psychology: Research and Practice*, 33(3), 249–259.

- i. Clearly establishing, through appropriate legal or administrative means, a definition of prohibited practices of “conversion therapy”, and ensuring that public funds are not used, directly or indirectly, to support them;
 - ii. Banning practices of “conversion therapy” from being advertised and carried out in health-care, religious, education, community, commercial or any other settings, public or private;
 - iii. Establishing a system of sanctions for non-compliance with the ban on practices of “conversion therapy”, commensurate with their gravity, including in particular, that claims should be promptly investigated and, if relevant, prosecuted and punished, under the parameters established under the international human rights obligations pertaining to the prohibition of torture and cruel, inhuman or degrading treatment or punishment;
 - iv. Creating monitoring, support and complaint mechanisms so that victims of practices of “conversion therapy” have access to all forms of reparations, including the right to rehabilitation, as well as legal assistance.
- b. Take urgent measures to protect children and young people from practices of “conversion therapy”, including by giving priority to the design and implementation of monitoring programmes for health-care, religious, education, community, commercial and any other settings, public or private, where children and young people are deprived of liberty by organs such as national human rights institutions or, if applicable, national preventive mechanisms.
- c. Carry out campaigns to raise awareness among parents, families and communities about the invalidity and ineffectiveness of and the damage caused by practices of “conversion therapy”.
- d. Adopt and facilitate health-care and other services related to the exploration, free development and/or affirmation of sexual orientation and/or gender identity, with a focus on addressing the conflicts that may arise between a patient’s orientation, identity and religious, social, or internalized norms and prejudices, with a focus on identity exploration and development, reducing distress and the need to address “minority stress”, as well as focusing on active coping and social support and the concept of affirmation.
- e. Foster dialogue with key stakeholders, including medical and health professional organizations, faith-based organizations, educational institutions and community-based organizations, to raise awareness about the human rights violations connected to practices of “conversion therapy”.

2. That States:

- a. Repeal laws and regulations that enable, promote or fuel practices of “conversion therapy, key among them being laws criminalizing diversity in sexual orientations or gender identities;
- b. Adopt appropriate anti-discrimination measures of a legislative, administrative or judiciary nature to ensure protection from violence and discrimination based on sexual orientation and gender identity;
- c. Ensure the de-pathologization of diversity in sexual orientation and gender identity in State and non-State medical classifications that have an impact on public health policies and diagnostics in all health-care settings, including in medical curricula, accreditation procedures and continuing education;
- d. Adopt all measures necessary to eliminate the social stigma associated with gender diversity, including the development, implementation and evaluation of an education and sensitization campaign, and in particular, all measures necessary to protect trans and gender-diverse children from all forms of discrimination and violence;
- e. Support the development of research and data collection, disaggregated by all relevant dimensions, on the specific issue of practices of “conversion therapy” and pursuant to the principles and safeguards identified by the Independent Expert, key among them being the participation of affected communities, populations and peoples;
- f. Design, implement and constantly evaluate education, training and public information campaigns to tackle stigma and prejudice against lesbian, gay, bisexual, trans or gender-diverse people and promote their social inclusion.⁴

In the Report, the Independent Expert refers to following international human rights principles which are found in international human rights instruments to which Australia is a signatory, which underline his recommendations. They are:

1. ***The principles of universality, equality and non-discrimination.***⁵ These principles are the cornerstone of international human rights law. The Report notes that as practices of conversation therapy target a specific group on the exclusive basis of sexual orientation and identity, they are “per se discriminatory.”⁶
2. ***Right to health.*** Every person, without distinction, should be able to enjoy the highest attainable standard of physical and mental health⁷, and every person should also be free

⁴ Above n1, pages 21-22.

⁵ United Nations Declaration of Human Rights, article 1.

⁶ Above n1, page 14

⁷ International Covenant on Economic, Social and Cultural Rights, article 12.

from non-consensual medical treatment.⁸ The Report notes that regulations requiring lesbian, gay, bisexual, transgender or intersex persons to be treated as mental or psychiatric patients or requiring that they be “cured” is a clear violation of their right to sexual and reproductive health.⁹

3. ***Prohibition on torture and ill-treatment.*** The Report notes that the United Nations anti-torture machinery has concluded that “conversion therapy” practices can amount to torture, cruel, inhuman or degrading treatment.¹⁰
4. ***Right to freedom of conscience and religion and freedom of expression.*** The Report considers this right in the context of claims of proponents of conversion therapy that it may be a tool for the furtherance of human rights, for example for persons who experience same sex desire but seek to live as a heterosexual. The Independent Expert, mindful and respectful of these kinds of internalised dilemmas, rejects this submission and notes that “the principles of freedom and autonomy directly contradict the idea that a person is born to play a certain role in society.”¹¹
5. ***Rights of the child.*** States have an obligation to protect children from violence, harmful practices and cruel, inhuman or degrading treatment or torture, to respect the right of the child to identity, physical and psychological integrity, health and freedom of expression and to uphold the core principle of the best interests of the child at all times¹², noting that the right of a child to identity, which includes sexual orientation and gender identity, must be respected and taken into account when assessing a child’s best interests.¹³ The Report notes that the imposition of practices of “conversion therapy” on children runs counter to these obligations.¹⁴

What are we asking?

In 2020, Queensland and the Australian Capital Territory passed legislation banning “conversion therapy”, passing legislation that made the practice a criminal offence. ALHR submits that Victoria must also take the steps recommended by the Independent Expert on the protection of violence and discrimination based on sexual orientation and gender identity. ALHR implores you vote in favour of the passage of the Bill, and to encourage your colleagues to do the same.

If you have any questions whatsoever, please do not hesitate to contact us.

⁸ Committee on Economic, Social and Cultural Rights, general comment No. 14 (2000) on the right to the highest attainable standard of health, para.8.

⁹ Committee on Economic, Social and Cultural Rights, general comment No. 14 (2000) on the right to sexual and reproductive health, para.23.

¹⁰ Above n1, page 15

¹¹ Above n1, page 17.

¹² Convention on the Rights of the Child, articles 3(1), 8, 19, 24 and 37.

¹³ Committee on the Rights of the Child, general comment No 14 (2013) on the right of the child to have his or her best interests taken as primary consideration, paras. 55 and 73.

¹⁴ Report, page 17.



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ALHR was established in 1993 and is a national association of Australian solicitors, barristers, academics, judicial officers and law students who practise and promote international human rights law in Australia. ALHR has active and engaged National, State and Territory committees and specialist thematic committees. Through advocacy, media engagement, education, networking, research and training, ALHR promotes, practices and protects universally accepted standards of human rights throughout Australia and overseas.