



Our reference: BNE3416962

12 December 2019

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

By email: health@parliament.qld.gov.au

Dear Committee

HEALTH LEGISLATION AMENDMENT BILL 2019

Thank you for the opportunity to make a submission to the inquiry into the Health Legislation Amendment Bill 2019 (the Bill). This submission is confined to measures in the Bill to prohibit the practice of conversion therapy.

Summary

In summary, the Queensland Human Rights Commission (the Commission) strongly supports the passage of clause 28 of the Bill.

Conversion Therapy

The Bill was introduced on 28 November 2019 by the Minister for Health and Minister for Ambulance Services and referred to the Committee for consideration.

The Bill would amend the *Public Health Act 2005* to prohibit the practice of conversion therapy by health service providers in Queensland. The objective is to protect the lesbian, gay, bisexual, transgender, intersex and queer (LGBTIQ+) community from harm caused by conversion therapy and to send the strong message that being an LGBTIQ+ person is not a disorder that requires treatment or correction.¹

Introducing the Bill implements one of the key recommendations made to state governments in the major 2018 report about conversion therapy in Australia, *Preventing*

¹ Explanatory Memorandum, Health Legislation Amendment Bill 2019 (Qld).

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*Harm, Promoting Justice: Responding to LGBT conversion therapy in Australia*² (Preventing Harm, Promoting Justice).

If the Bill is passed, Queensland will be the first Australian jurisdiction to take legislative action to address these harmful and degrading practices.

Ending Sexual Orientation Conversion Therapy Roundtable

My delegate participated in the *Ending Sexual Orientation Conversion Therapy Roundtable* (the Roundtable), convened by the Minister for Health and Minister for Ambulance Services, in November 2018. At the Roundtable my delegate expressed the Commission's view that the *Anti-Discrimination Act 1991* provides only patchy protections for people in relation to this issue, and a legislative approach is warranted to prevent health practitioners from engaging in practices that seek to change or suppress sexual orientation or gender identity.

It is encouraging to see that the feedback from the Roundtable has been properly considered and incorporated into the Bill.

The role of the Queensland Human Rights Commission

The Queensland Human Rights Commission has functions under the *Anti-Discrimination Act 1991* and the *Human Rights Act 2019* to promote an understanding and discussion of human rights in Queensland, and to provide information and educative services about human rights.

Queensland's *Human Rights Act 2019* and *Anti-Discrimination Act 1991* contain specific protections for LGBTIQ+ people, which we work to uphold.

The Bill aligns with the Commission's vision of making human rights real for everyone in Queensland.

Preventing Harm

The Commission supports the Bill because it aims to prevent harm to people who identify as LGBTIQ+ whilst also sending a strong message to young people who are diverse in sexuality or gender identity that they are not 'broken' or 'disordered'.

LGBTIQ+ people are currently vulnerable to harm from practices that seek to suppress or change their immutable characteristics of sexuality or gender identity. There is ample research to indicate that the mental health of LGBTIQ+ people is significantly worse than the broader population.³ While it is difficult to measure the prevalence of conversion therapy in contemporary Australia, the Preventing Harm, Promoting Justice report cited survey results from the United Kingdom, a comparable jurisdiction.⁴ The report also provided qualitative data in the form of interviews with people who had received conversion therapies over the period 1986 to 2016. The reported impacts of receiving conversion therapy on individuals included experiencing self-hatred and shame, grief and loss, loss of

² Jones, TW, Brown, A, Carnie, L, Fletcher, G, and Leonard, W (2018) *Preventing Harm, Promoting Justice: Responding to LGBT conversion therapy in Australia*. Melbourne: Latrobe University and Human Rights Law Centre.

³ LGBTI National Health Alliance, "The Statistics at a Glance: The Mental Health of Lesbian, Gay, Bisexual, Transgender and Intersex People in Australia", 2016 at <https://lgbtihealth.org.au/statistics/>

⁴ Around 7% of respondents had received or been offered conversion therapy, with around 13% of trans and gender diverse respondents having been offered conversion therapy. Source: National LGBT Survey: Research Report (Manchester: Government Equalities Office, 2018), 83-94.

relationships, loss of intimacy, connection and pleasure, mental health problems and self-harm.⁵

Regardless of the prevalence of conversion therapy practices, the extent of the harm alone justifies a strong legislative response.

Human Rights

The Bill is consistent with Queensland's international obligations to uphold the human rights of everyone, regardless of sexuality or gender identity. The human rights of LGBTIQ+ people have been affirmed and upheld through various international human rights treaties, including the *International Covenant on Civil and Political Rights* (the ICCPR).

The *Human Rights Act 2019* aims to consolidate and establish statutory protections for human rights recognised under human rights treaties. A key human right protected under the *Human Rights Act 2019* is the right to recognition and equality before the law, based on articles 16 and 26 of the ICCPR.⁶ Other relevant human rights expressed in the ICCPR and the *Human Rights Act 2019* that may be afforded protection by the Bill include the right to freedom of expression,⁷ and the right to privacy and reputation.⁸ Further, the passage of the Bill would be consistent with the right to receive health services without discrimination.⁹

The Yogyakarta Principles¹⁰ (the Principles) were developed to inform state parties' understanding of how existing human rights apply to LGBTIQ+ people. With respect to the right to recognition and equality before the law as it relates to LGBTIQ+ people, the Yogyakarta Principles includes the following statement:

*No one shall be subjected to pressure to conceal, suppress or deny their sexual orientation or gender identity.*¹¹

In relation to medical care, Principles state that:

*Notwithstanding any classifications to the contrary, a person's sexual orientation and gender identity are not, in and of themselves, medical conditions and are not to be treated, cured or suppressed.*¹²

The Principles recommend that state parties:

*...ensure that any medical or psychological treatment or counselling does not, explicitly or implicitly, treat sexual orientation and gender identity as medical conditions to be treated, cured or suppressed.*¹³

⁵ Jones, TW, Brown, A, Carnie, L, Fletcher, G, and Leonard, W (2018) *Preventing Harm, Promoting Justice: Responding to LGBT conversion therapy in Australia*. Melbourne: Latrobe University and Human Rights Law Centre at p38-41.

⁶ Section 15 *Human Rights Act 2019* (Qld)

⁷ Section 21 *Human Rights Act 2019* (Qld)

⁸ Section 25 *Human Rights Act 2019* (Qld)

⁹ Section 37 *Human Rights Act 2019* (Qld)

¹⁰ *Yogyakarta Principles*, 2017

¹¹ *Yogyakarta Principles*, 2017 – principle 3.

¹² *Yogyakarta Principles*, 2017 – principle 18.

¹³ *Yogyakarta Principles*, 2017 – principle 18.

Passing the Bill would contribute to ensuring the human rights of LGBTIQ+ people in accordance with international human rights obligations as articulated in the Principles.

Discrimination

The *Anti-Discrimination Act 1991* provides protections from discrimination for people in Queensland on the basis of their sexuality, sex and gender identity.

The Bill is consistent with the purposes set out in the *Anti-Discrimination Act 1991* in promoting the equality of opportunity for everyone and ensuring that all Queenslanders live free from discrimination.

A Balanced Approach

Conversion therapy can occur in both clinical settings and in pastoral care settings within faith communities in Queensland. By limiting the scope of the Bill to include only the actions health practitioners, the Bill avoids any disproportionate incursion into right to freedom of thought, conscience, religion and belief.¹⁴

The Bill is also consistent with the recommendations of expert bodies including the Australian Psychological Association, Australian Medical Association and World Health Organization, which all strongly oppose the use of conversion therapy.

It is vital to ensure that any person is able to explore issues around their sexuality or gender identity with a counsellor or psychologist or seek other treatment in an accepting and affirming setting. Importantly, the Bill ensures that affirmative care models can continue unimpeded.

I commend the Queensland government for its continued efforts to promote the human rights of LGBTIQ+ people and in leading the way on this issue.

Thank you for the opportunity to provide a submission on the Bill.

Yours sincerely



SCOTT MCDOUGALL
Queensland Human Rights Commissioner

¹⁴ Section 20 *Human Rights Act 2019* (Qld)



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24 December 2019

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Dear Committee

HEALTH LEGISLATION AMENDMENT BILL 2019

Thank you for the opportunity to make a submission to the inquiry into the Health Legislation Amendment Bill 2019 (the Bill). This submission is confined to Part 3 of the Bill containing amendment of the *Hospital and Health Boards Act 2011*.

The explanatory notes for this portion of the Bill state the amendments implement policy initiatives and improves the effective operation of the *Hospital and Health Boards Act 2011* by:

- strengthening the commitment to health equity for Aboriginal people and Torres Strait Islander people and strengthening the capability and effectiveness of Hospital and Health Boards by:
 - including as a guiding principle a commitment to achieving health equity and delivery of responsive, capable and culturally competent health care to Aboriginal people and Torres Strait Islander people;
 - requiring each Hospital and Health Service to have a strategy for achieving health equity for Aboriginal people and Torres Strait Islander people; and
 - requiring each Hospital and Health Board to have one or more Aboriginal persons and/or Torres Strait Islander persons as members.

The Queensland Human Rights Commission (the Commission) strongly supports the passage of Part 3 of the Bill.

The role of the Queensland Human Rights Commission

The Queensland Human Rights Commission has functions under the *Anti-Discrimination Act 1991* and the *Human Rights Act 2019 (HRA)* to promote an understanding and discussion of human rights in Queensland, and to provide information and educative services about human rights.

Queensland's *Human Rights Act 2019* and *Anti-Discrimination Act 1991 (ADA)* contain specific protections for Aboriginal and Torres Strait Islander people, which we work to uphold.

Part 3 of the Bill aligns with the Commission's vision of making human rights real for everyone in Queensland.

Background to Proposed Amendment to the Hospital and Health Boards Act 2011

In 2008, the Commonwealth and all Australian States and Territories committed to action to 'Closing the Gap' between Aboriginal people and Torres Strait Islander people and other Australians through the National Indigenous Reform Agreement. The Close the Gap Campaign brought public attention to the poorer health of Aboriginal and Torres Strait Islander people compared to the non-Indigenous population, and the *National Aboriginal and Torres Strait Islander Health Plan 2013–2023* identified the need to address systemic racism within the health system to improve health outcomes.

Systemic racism is the observance and administration of policies, rules and procedures that purport to treat everybody equally, but are unfairly or inequitably administered or applied in dealings with people belonging to a particular racial, ethnic, religious or cultural group. In some instances this can be a form of indirect discrimination prohibited by the *Anti-Discrimination Act 1991*.¹

The explanatory notes to the Bill detail the genesis of these proposed amendments to the Hospital and Health Boards Act 2011 as follows:

In March 2017, Adrian Marrie provided the *Addressing institutional barriers to health equity for Aboriginal and Torres Strait Islander people in Queensland's public hospital and health services report* (the Health Equity Report) to the Anti-Discrimination Commission Queensland. The Health Equity Report identified institutional barriers to health equity for Aboriginal people and Torres Strait Islander people in Queensland's public health system.

The Health Equity Report considered the *Hospital and Health Boards Act* renders Aboriginal people and Torres Strait Islander people 'legally invisible' by not including, for example:

- a statement of commitment to Closing the Gap in Aboriginal and Torres Strait Islander health in a preamble to the Act, reflecting that 'Aboriginal and Torres Strait Islander health is everyone's business';
- a provision for the delivery of responsive, capable and culturally competent health care to Aboriginal and Torres Strait Islander people in Queensland as an object of the Act; and
- a requirement that Hospital and Health Boards have among their members a person, or persons, with expertise and experience in Aboriginal and Torres Strait Islander health care or health service delivery among the skills, knowledge and experience required for a Hospital and Health Service to perform its functions effectively and efficiently.

The Health Equity Report concluded that, 'the *Hospital and Health Boards Act* fails to give the necessary legislative force to the COAG national partnership agreements and federal and Queensland policy imperatives to close the Aboriginal and Torres Strait Islander health gap, thus indicating to the Aboriginal and Torres Strait Islander communities that the State is not taking its responsibilities to close the Indigenous Health Gap seriously.

¹ Section 11 *Anti-Discrimination Act 1991*.

In early 2019, the Minister for Health and Minister for Ambulance Services convened an expert panel comprising Mr Jim McGowan AM, Professor Anne Tiernan and Dr Pradeep Philip (Panel) to provide advice on Queensland Health's governance framework as established by the *Hospital and Health Boards Act*.

The Panel considered the findings of the Health Equity Report and recommended the *Hospital and Health Boards Act* be amended to embed the Queensland Government's commitment to closing the gap in Aboriginal and Torres Strait Islander health. The Panel also recommended the mandating of Aboriginal and Torres Strait Islander representation on Hospital and Health Boards.

Human Rights

The Bill is consistent with Queensland's international obligations to uphold the human rights of everyone. The human rights of Aboriginal and Torres Strait Islander people have been affirmed and upheld through various international human rights instruments, including the *International Covenant on Civil and Political Rights* (the ICCPR), *International Convention on the Elimination of All Forms of Racial Discrimination*, and *United Nations Declaration on the Rights of Indigenous Peoples*.

The *Human Rights Act 2019* aims to consolidate and establish statutory protections for human rights recognised under human rights treaties. A key human right protected under the HRA is the right to recognition and equality before the law, based on articles 16 and 26 of the ICCPR.² Other relevant human rights expressed in the HRA that may be afforded protection by Part 3 of the Bill include the right to receive health services without discrimination,³ and the cultural rights of Aboriginal and Torres Strait Islander peoples.⁴

Discrimination

The *Anti-Discrimination Act 1991* provides protection from discrimination for people in Queensland on the basis of their race in the provision of services, including the provision of health services.⁵ The ADA also permits acts to promote equal opportunity for a group of people if the purpose of the act is not inconsistent with the ADA. This is only permitted until the purpose of equal opportunity has been achieved⁶.

The Bill is consistent with the purposes set out in the *Anti-Discrimination Act 1991* in promoting the equality of opportunity for everyone and ensuring that all Queenslanders live free from discrimination.

The Queensland Human Rights Commission strongly supports Part 3 of the Bill, and recommends the Committee supports its passage through the Parliament.

Yours sincerely



SCOTT MCDUGALL
Queensland Human Rights Commissioner

² Section 15 *Human Rights Act 2019* (Qld)

³ Section 37 *Human Rights Act 2019* (Qld)

⁴Section 28 *Human Rights Act 2019* (Qld)

⁵ Sections 9 and 46 *Anti-Discrimination Act 1991*(Qld)

⁶ Section 105 *Anti-Discrimination Act 1991*(Qld)