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**The Royal Australasian College of
Physicians' submission to the
Justice Select Committee**

**Conversion Practices Prohibition
Legislation Bill
Mahuru 2021**

Introduction

The Royal Australasian College of Physicians (RACP) welcomes the opportunity to submit feedback to the Justice Select Committee on the Conversion Practices Prohibition Legislation Bill (the Bill).

The RACP works across more than 40 medical specialties to educate, innovate and advocate for excellence in health and medical care. Working with our senior members, the RACP trains the next generation of specialists, while playing a lead role in developing world best practice models of care. We also draw on the skills of our members, to develop policies that promote a healthier society. By working together, our members advance the interest of our profession, our patients and the broader community.

Overall Position

The RACP strongly supports the intention of the Bill to prohibit conversion practices¹. Affirming the dignity and upholding the human rights of lesbian, gay, bisexual, trans, queer, intersex, asexual, takatāpui, non-binary and gender-diverse (LGBTQIA+) New Zealanders to live free from discrimination and harm must be the central tenets of the Bill.

Conversion practices have significant impacts and have been linked low self-esteem, depression, anxiety, self-harm and suicidal thinking, ideation, and completion². Survivors can experience trauma and distress as a direct result of conversion practices over the course of their lives, and while prohibition and criminal prosecution are presented as deterrents, people subjected to conversion practices must have access to support recovery and wellbeing.

Conversion practices cannot continue in Aotearoa New Zealand. The RACP acknowledges the expertise, leadership and skills of our Professional Association for Transgender Health Aotearoa (PATHA) and the New Zealand Sexual Health Society (NZ SHS) in the development of this submission.

Conversion practices are inherently harmful and unethical

The RACP supports clinical care that is non-judgemental, culturally safe, supportive, affirming and welcoming for all whānau in Aotearoa New Zealand. Our members are partners in the care of people and whānau, where the emphasis is on a multidisciplinary approach to providing person-centred care which prioritises the person's autonomy, best interests, preferences and goals³.

¹ The RACP acknowledges that the Bill uses “conversion practices” and will also use this wording in our submission. Phrasing like “conversion therapy” or “reparative therapy” only perpetuate the harmful myth that these destructive practices are in some way therapeutic, or that a person's sexual orientation or gender identity needs to be restored to cis-gender and/or heterosexuality.

² Turban JL, Beckwith N, Reisner SL. Association between recalled exposure to gender identity conversion efforts and psychological distress and suicide attempts among transgender adults. [Internet] JAMA Psychiatry. 2020;77(1):68-76. Available from <https://jamanetwork.com/journals/jamapsychiatry/fullarticle/2749479>. Accessed 2 September 2021.

³ Royal Australasian College of Physicians. Letter to Minister of Health Greg Hunt regarding gender dysphoria in children and adolescents. March 2020. Available from https://www.racp.edu.au/docs/default-source/advocacy-library/racp-letter-non-greg-hunt-minister-for-health-gender-dysphoria-in-children-and-adolescents.pdf?sfvrsn=3c2de91a_4. Accessed 25 August 2021.

There is no scientific evidence that sexual orientation or gender identity can be changed^{4 5}. Sexual orientation and gender identity exist on spectrums; all are normal and healthy variations of human functioning, relationships, and bodies; these are not psychological illnesses, syndromes or disorders, and cannot be cured or corrected^{6 7}.

Efforts to change sexual orientation or gender identity through the guise of health care are unethical. These practices are opposed to the fundamental principles of medical practice, being the promotion of wellbeing and not doing harm^{8 9}.

Definitions

The Bill would be considerably strengthened through the inclusion of definitions. Terms and concepts applied in the Bill must be able to be described in and of themselves, rather than being defined in relation to, or opposition to, another concept. The RACP supports definitions included in the Bill for:

Gender-affirming health care refers to any healthcare that affirms a person's gender and increases congruence between their body and their gender or sense of self. This covers a wide range of interventions including counselling, and psychosocial support, hair removal, voice therapy, puberty blockers, gender affirming hormones and surgery.

The RACP supports a separate, distinct definition for gender-affirming health care. There is no tension between prohibiting conversion practices and providing gender-affirming care, because conversion practices are undertaken with the sole purpose of changing or suppressing someone's 'self-defined' gender identity or expression. In contrast, gender-affirming health care is predicated on supporting an individual to affirm their self-identified gender identity through access to relevant interventions provided by trained clinicians competent in the care of transgender people.

Conversion practice should be defined with no reference to therapeutic intervention, as we note in Footnote 1. Further, we note that some academics have moved to "sexual orientation and gender identity change efforts" (SOGICE) as an umbrella term to incorporate a range of actions and interventions⁵. SOGICE may be more subtle in applying psychosocial pressure from respected figures over a longer period of time, including whānau, teachers, health practitioners, and religious leaders.

⁴ Royal Australian and New Zealand College of Psychiatrists. Victorian Branch submission on the legislative options to implement a ban of conversion practices. Melbourne: The Royal Australian and New Zealand College of Psychiatrists; 2019. Available from <https://www.ranzcp.org/files/resources/submissions/departement-of-justice-and-community-safety-legisl.aspx>.

⁵ Fish JN, Russell ST. Sexual orientation and gender identity change efforts are unethical and harmful. [Internet] Am J Public Health. 2020;110(8)1113-1114. Available from <https://pubmed.ncbi.nlm.nih.gov/32639919/>. Accessed 2 September 2021.

⁶ New Zealand Psychological Society. Position statement on "conversion therapy". Wellington: New Zealand Psychological Society; 2019. Available from https://www.psychology.org.nz/application/files/9016/1350/6552/conversion_therapy_statement_-_Final_2-21.pdf. Accessed 25 August 2021.

⁷ New Zealand Medical Association. Conversion therapy has no place in New Zealand. Media release. 2 August 2021. Available from <https://www.nzma.org.nz/news/conversion-therapy-has-no-place-in-new-zealand>. Accessed 26 August 2021.

⁸ World Medical Association. Statement on natural variations of human sexuality. Adopted at the 64th General Assembly, Fortaleza, Brazil, 2013. Available from <https://www.wma.net/policies-post/wma-statement-on-natural-variations-of-human-sexuality/>. Accessed 3 September 2021.

⁹ New Zealand Association of Counsellors. Conversion Therapy policy. Wellington: New Zealand Association of Counsellors; 2020. Available from <https://www.nzac.org.nz/assets/Ethics/Conversion-Therapy-2020.pdf>. Accessed 25 August 2021.

The Bill does not define sexual orientation, gender identity, or gender expression.

Definitions for **sexual orientation**, **gender expression** and **gender identity** should be drawn from the Yogyakarta Principles Plus 10, an authoritative statement affirming the human rights of persons of diverse sexual orientations, gender identities, gender expressions and sex characteristics¹⁰.

The role of health practitioners in the Bill

The RACP acknowledges that the medical profession and health system has inflicted, and contributed to, significant trauma, harm and distress for LGBTQIA+ communities in Aotearoa New Zealand and around the world. This is not a historical matter: 17 per cent of respondents to the *Counting Ourselves* (2018) survey reported an experience of conversion practice where a health practitioner had attempted to stop them from being trans or non-binary¹¹. This is consistent with findings of the LGBT Foundation's *Global State of Conversion Therapy* report, which identifies health professionals (particularly in mental health) among common providers of conversion practices¹².

This is of deep concern to our College, and we recognise as a profession, as institutions and actors in the health system we have work to do to uphold the autonomy and tino rangatiratanga of LGBTQIA+ people. We recognise that, as a collective of medical specialists we are not experts in LGBTQIA+ perspectives and ways of being; and we must learn from, and ally with, the queer community, while continuing to challenge our individual biases and assumptions.

There are opportunities for the RACP, its peer medical colleges and professional associations to work together to improve education and understanding for medical practitioners working with LGBTQIA+ people and whānau. The medical profession must continue to reflect and interrogate its training, education, systems and practices to ensure it remains cognisant of the fluidity of cultural norms and the visibility of cultures that have in the past been actively suppressed, in order to remain relevant and practice safely.

Comment on scopes of practice

Section 5 (2) outlines a number of scenarios which do not constitute conversion practices, including S5 (2) (a), "a health service provided by a health practitioner in accordance with the practitioner's scope of practice". The Medical Council of New Zealand does not, at time of writing, offer a scope of practice specific to the health care and medical treatment of LGBTQIA+ people and whānau. Currently, clinical care is provided by a range of practitioners, including general practitioners, paediatricians, adolescent medicine specialists, endocrinologists, sexual health specialists, psychiatrists and surgeons; nurses and nurse practitioners; as well as allied health colleagues – clinical psychologists, psychotherapists, and voice therapists.

¹⁰ Yogyakarta Principles plus 10. Additional principles on the application of international human rights law in relation to sexual orientation, gender identity, gender expression and sex characteristics to compliment the Yogyakarta Principles. Geneva; 2017. Available from http://yogyakartaprinciples.org/wp-content/uploads/2017/11/A5_yogyakartaWEB-2.pdf. Accessed 6 September 2021.

¹¹ Veale J, Byrne J, Tan K, Guy S, Yee A, Nopera T & Bentham R (2019) Counting Ourselves: The health and wellbeing of trans and non-binary people in Aotearoa New Zealand. Transgender Health Research Lab, University of Waikato: Hamilton NZ. Available from https://countingourselves.nz/wp-content/uploads/2020/01/Counting-Ourselves_Report-Dec-19-Online.pdf. Accessed 1 September 2021.

¹² Adamson TM, Wallach S, Garner A, Hanley M, Howell S. The Global State of Conversion Therapy - A Preliminary Report and Current Evidence Brief [Internet]. SocArXiv; 2020. Available from: <http://www.osf.io/preprints/socarxiv/9ew78>. Accessed 1 September 2021.

Safe and quality provision of care necessitates a multidisciplinary approach, including collegial and peer support. This is not possible in the current environment, where there is no funded wraparound service, and waitlists for gender-affirming surgery in particular stretch several years¹³. We strongly encourage the Select Committee to make recommendations further supporting people's rights to access timely gender-affirming health care, treatment and services.

Given the range of specialities and practitioners involved, determining whether or not a patient encounter constitutes a conversion practice through the application of scope of practice framing may be difficult. The Select Committee should recommend that the Authorities responsible for the regulation and oversight of health practitioners make updates to professional standards to improve safe care, service provision, and achieve equitable health outcomes for LGBTQIA+ people and whānau.

The framing of intent in the Bill

The Bill distinguishes between groups according to age and ability to consent: children and adolescents under 18 years, and people who do not have the capacity to consent are covered in section 8; and adults over 18 years of age in section 9.

The Medical Council of New Zealand does not specify a minimum age for consent and assumes that a patient is able to make their own decisions about their care unless there are reasonable grounds to think otherwise¹⁴. The Care of Children Act 2004 states that children aged 16 are able to consent to any medical, surgical or dental treatment or procedure to be carried out on the child for the child's benefit by a person professionally qualified to carry it out¹⁵.

In the instance that conversion practices are undertaken in the context of medical treatment or care, a distinction of 18 years may be arbitrary, and there is evidence that people experience lifetime exposure to conversion practices regardless of their age¹⁶. Breaches of professional standards and the Code of Health and Disability Service Consumer's Rights, as well as section 10 of the Bill (Consent not defence) may provide more consistent framing, and remove the need for an age-based distinction.

In section 9, a person (Person A) performing conversion practices on another person (Person B) would be committing an offence if they knew that they would cause serious harm to Person B. Intent will be challenging to prove in instances where Person A denies any wrongdoing, as they do not believe their actions will have contributed to trauma and harm experienced by Person B – in contrast, they may believe their actions were beneficial.

Further, a threshold of "serious harm" (physical, psychological, or emotional harm that seriously and detrimentally affects the health, safety, or welfare of the individual) may be difficult to prove, and places the burden of proof on the person subjected to conversion practices.

¹³ Ministry of Health. Updates from the gender-affirming (genital) surgery service. Wellington: Ministry of Health; 2021. Available from <https://www.health.govt.nz/our-work/preventative-health-wellness/delivering-health-services-transgender-people/updates-gender-affirming-genital-surgery-service>. Accessed 3 September 2021.

¹⁴ Medical Council of New Zealand. Statement on informed consent: Helping patients make informed decisions about their care. Wellington: Medical Council of New Zealand; 2019. Available from: <https://www.mcnz.org.nz/assets/standards/79e1482703/Statement-on-informed-consent.pdf>. Accessed 3 September 2021.

¹⁵ Care of Children Act 2004. S 36 (1) (b).

¹⁶ Green AE, Price-Feeney M, Dorison SH, Pick CJ. Self-reported conversion efforts and suicidality among US LGBTQ youth and young adults, 2018. [Internet]. *Am J Public Health* 2020;110(8):1221-1227. Available from <https://pubmed.ncbi.nlm.nih.gov/32552019/>. Accessed 3 September 2021.

The Bill must be categorical: there should be no allowance or defence under Section 5 (2) (f) for the “expression only of a religious principle or belief made to an individual”. It is clear from the evidence that conversion practices may be more subtly coercive and indirect than the Bill stipulates.

We recommend the Select Committee combines sections 8 and 9. People of all ages should be protected, and the framing of intent to cause harm shifted to negligence.

Reference to Intersex New Zealanders

There is no specific reference to Intersex New Zealanders in the Bill, and the RACP supports an explicit ban on conversion practices performed on intersex people. The RACP urges the Select Committee to listen to the experiences and ideas of intersex people through the Committee hearing process, and use this to inform its recommendations to the Ministry of Health.

The RACP notes that the specific harms faced and experienced by intersex people may be outside the scope of the current Bill, and the potential to meet the needs of intersex New Zealanders through the regulatory phase of the legislation must be highlighted by the Select Committee.

Access to treatment for survivors of Conversion Practices under the Accident Compensation Act 2001

Conversion practices are inherently harmful, and survivors of conversion therapy experience high rates of depression, anxiety, self-harm, and suicidal ideation. These outcomes constitute a mental injury for people who have experienced, survived and are victims of conversions practices. The Accident Compensation Act 2001’s Schedule 3 details offences punishable under the Crimes Act 1961 which would be eligible for mental injury cover under the ACC scheme. We recommend that conversion practices are added to this Schedule, as it constitutes a criminal offence and if convicted, offenders may serve a custodial sentence.

Role of Attorney General

The rationale for prosecution to be at the discretion of the Attorney General is unclear. The Attorney General is appointed by the government of the day and is invariably a cabinet minister. As such, the role of Attorney General is inherently political, and the subsequent legislation is open to political interpretation or possible repeal by future governments. We recommend Section 12 detailing the role of the Attorney General is removed, reducing the barriers to justice faced by survivors.

Recommendations to the Select Committee

The RACP encourages the Select Committee to consider the practical application of the Bill once it has received the Royal Ascent, particularly with regard to resourcing, implementation and monitoring.

1. Develop an implementation plan
 - a) led by, and in partnership with, LGBTQIA+ people, whānau and communities
 - b) includes education for health practitioners, whānau and communities

2. Ensure the Human Rights Commission has the appropriate and necessary resources to support civil redress.
 - a) Pathways to support survivors seek civil redress must be developed in partnership with LGBTQIA+ communities
3. Recommend the legislation is reviewed two years after coming into force
 - a) A review should have particular focus on whether or not the Act and associated instruments are fit for purpose
 - b) This should be a survivor-centred evaluation, with justice and equity at its heart
4. Amend the Charities Act 2005 to create a liability for organisations
 - a) Where an organisation is found to provide and/or endorse conversion practices, “conversion practices” is included in the meaning of “serious wrongdoing” in the Act

Affirmation of Gender and Sexual Identities in Society

Promoting and embracing acceptance of all gender and sexual identities in society is an important visible and affirmative action for LGBTQIA+ people whānau and allies in Aotearoa New Zealand, particularly for people (of any age) who are exploring their identity.

The inequities experienced by LGBTQIA+ communities are the result of systemic and structural discrimination and stigmatisation, and extend to every facet of life, from housing, education, and employment to financial hardship, safety and community connectedness^{Error! Bookmark not defined.}.

Prohibiting conversion practices that cause harm must be met with equally affirmative actions to recognise, acknowledge and create space for people with diverse gender and sexual identities. The RACP notes that since the publication of the *Counting Ourselves* survey, Stats NZ has published wellbeing data on people of different sexual identities, and included gender identity questions in the 2019 General Social Survey to reflect the spectrum of gender identities in Aotearoa New Zealand¹⁷¹⁸. Further action to centre equitable and inclusive practices as part of legislation development, policy, programmes and civic engagement should be prioritised, including right to self-identify under the Births, Deaths, Marriages and Relationships Registration Bill.

Conclusion

The RACP thanks the Justice Select Committee for the opportunity to provide feedback on this consultation. To discuss this submission further, please contact the RACP’s Aotearoa NZ Policy and Advocacy Unit at policy@racp.org.nz.

Nāku noa, nā



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¹⁷ Stats NZ. New sexual identity wellbeing data reflects the diversity of New Zealanders. 26 June 2019. Available from <https://www.stats.govt.nz/news/new-sexual-identity-wellbeing-data-reflects-diversity-of-new-zealanders>. Accessed 1 September 2021.

¹⁸ Stats NZ. Gender inclusive questions introduced to better reflect New Zealanders. 24 June 2019. Available from <https://www.stats.govt.nz/news/gender-inclusive-questions-introduced-to-better-reflect-new-zealanders>. Accessed 1 September 2021.