



**Submission to the Justice Committee**

**on the**

**Conversion Practices Prohibition Legislation Bill**

8 September 2021

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## **Introduction**

1. The Professional Association for Transgender Health Aotearoa (PATHA) welcomes the proposed Conversion Practices Prohibition Bill (2021) which has the potential to provide much needed protections for transgender people. This includes protecting transgender people from attempts to change or suppress their gender identity or gender expression. For transgender people who are also sexual minorities, it provides protection from harmful attitudes towards their sexuality. For transgender people who are also intersex, if the Bill's scope was extended to include sex characteristics, this would provide protection from harmful attempts to change their innate variations of sex characteristics.
2. We recognise and welcome the inclusive and encompassing stance which is demonstrated in the tone of the proposed Bill, and its consideration of recent legislative progress to prohibit conversion practices in other comparable jurisdictions. PATHA would encourage the Select Committee to consider further lessons that could be learnt from the legislative changes in the Australian state of Victoria, particularly around the definition of conversion practices.
3. However, there are some areas where the Bill does not encompass a strong understanding of how conversion practices are undertaken in New Zealand currently, including in healthcare settings. PATHA's submission highlights changes needed to realise the Bill's objectives to prohibit conversion practices, affirm the dignity of all people, prevent the harm conversion practices cause in New Zealand, provide an avenue for redress, and uphold the human rights of all to live free from discrimination and harm.
4. PATHA welcomes the opportunity to submit on the Conversion Practices Prohibition Legislation Bill and requests the opportunity to provide an oral submission to the Select Committee.

## **About PATHA**

5. PATHA is committed to improving the health of transgender people in Aotearoa. Our vision is that all transgender people have full access to appropriate healthcare, and that all healthcare providers have access to information and resources which enable them to provide appropriate healthcare. By extension, this also encompasses speaking against and preventing provision of inappropriate and/or potentially damaging treatments, including conversion practices.

6. We are an interdisciplinary professional organisation working to promote the health, wellbeing, and rights of transgender people. We have more than 170 members who work professionally for transgender health in clinical, academic, community, legal and other settings.

## **About gender-affirming healthcare**

7. Much of PATHA's work is focused on increasing reliable access to gender-affirming healthcare within the public healthcare system. The term *gender-affirming healthcare* 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 surgeries.
8. Each person has their own individual needs, and best practice gender-affirming healthcare is guided by the principle of Te Mana Whakahaere - trans people's autonomy of their own bodies, represented by healthcare provision based on informed consent.<sup>1</sup> For many transgender people, accessing gender-affirming healthcare is essential to their wellbeing.
9. There is no tension between prohibiting conversion practices and providing gender-affirming healthcare. This is because conversion practices are undertaken with the purpose of changing or suppressing someone's self-defined gender identity or expression. In contrast, gender-affirming healthcare is predicated on supporting an individual to affirm their self-defined gender identity and expression through access to relevant medical interventions provided by trained clinicians, competent in the care of transgender individuals.

## **Health research strongly supports the Bill**

### ***Evolution of terms***

10. Research about the impacts of conversion practices has shifted over time from using the term "conversion therapy" towards a new umbrella term that clarifies that such practices do not have any positive therapeutic value, and focuses on the intent of such practices, namely, to change or suppress a person's identity or expression. For example, since 2009, the American Psychological Association has used the term "Sexual Orientation Change

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<sup>1</sup> Oliphant, J., Veale, J., Macdonald, J., Carroll, R., Johnson, R., Harte, M., Stephenson, C., Bullock, J., Cole, D. & Manning, P. (2018). "Guidelines for Gender Affirming Healthcare for Gender Diverse and Transgender Children, Young People and Adults in Aotearoa, New Zealand." *New Zealand Medical Journal* 131(1487).

Efforts” (SOCE) to describe “all means to change sexual orientation”<sup>2</sup> and, in February 2021, they issued a standalone Resolution on Gender Identity Change Efforts.<sup>3</sup> The overarching term Sexual Orientation and Gender Identity and Expression Change Efforts (SOGIECE) is used increasingly by some academics and in some reports to describe attempts to change or suppress any of these core elements of a person’s identity.<sup>4</sup>

### ***International evidence that conversion practices harm trans people’s health***

11. The right to health is found in many international treaties that New Zealand has ratified, but most comprehensively outlined in Article 12 of International Covenant on Economic Social and Cultural Rights (ICESCR). The obligation of states parties under ICESCR include to guarantee that they will be exercised without discrimination of any kind.<sup>5</sup> In its General Comment No. 22 in 2016, the United Nations Committee on Economic Social and Cultural Rights (CESCR) spoke out against conversion practices and the need to combat wider systemic discrimination against gender and sexual minorities that fuels such practices.

*“(R)egulations requiring that lesbian, gay, bisexual transgender and intersex persons be treated as mental or psychiatric patients or requiring that they be “cured” by so-called “treatment”, are a clear violation of their right to sexual and reproductive health. State parties also have an obligation to combat homophobia and transphobia, which lead to discrimination, including violation of the right to sexual and reproductive health.”<sup>6</sup>*

12. The United Nations Committee on the Rights of Persons with Disabilities has also expressed concern about conversion therapy practices conducted on LGBT+ persons without their consent by “private and public health entities”. It made these comments under Article 17 of the Convention (protecting the integrity of the person).<sup>7</sup>

13. Health professional bodies worldwide have condemned conversion practices. Canadian trans-feminine jurist and bio-ethicist Florence Ashley maintains a selected register of more

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<sup>2</sup> American Psychological Association, Resolution on Appropriate Affirmative Responses to Sexual Orientation Distress and Change Efforts (2009), fn. 1. <https://www.apa.org/about/policy/sexual-orientation>

<sup>3</sup> American Psychological Association Resolution on Gender Identity Change Efforts, February 2021. <https://www.apa.org/about/policy/resolution-gender-identity-change-efforts.pdf>

<sup>4</sup> For example, Lucas Ramón Mendos (International Lesbian, Gay, Bisexual, Trans and Intersex Association World) (2020). “Curbing deception: a world survey on legal regulation of so-called ‘conversion therapies’”, 2020 , p. 17. Available at <https://ilga.org/Conversion-therapy-global-research-ILGA-World>

<sup>5</sup> <https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx>

<sup>6</sup> CESCR GC 22 (2016), E/C.12/2000/4, para.23.

<sup>7</sup> CRPD/C/POL/CO/1, (2018) para.30.

than 50 statements by international, regional and national health professional bodies against gender identity conversion practices.<sup>8</sup> This includes the following statement in the World Professional Association for Transgender Health’s Standards of Care, Version 7, in 2012:

*“Treatment aimed at trying to change a person’s gender identity and expression to become more congruent with sex assigned at birth has been attempted in the past without success (Gelder & Marks, 1969; Greenson, 1964), particularly in the long term (Cohen-Kettenis & Kuiper, 1984; Pauly, 1965). Such treatment is no longer considered ethical.”<sup>9</sup>*

14. Examples of health professional bodies in Aotearoa that have developed statements against conversion practices, including those targeting trans people’s gender identity or expression, include the New Zealand Medical Association, New Zealand Association of Counsellors, the Aotearoa New Zealand Association of Social Workers, and the New Zealand Psychological Society.<sup>10</sup>

#### ***Detailed analysis of data about the impacts of conversion practices in Aotearoa***

15. The 2018 Counting Ourselves survey provides the first published quantitative data about the incidence of conversion practices in this country, with responses from 1,178 trans and non-binary aged 14 or over living in Aotearoa New Zealand. This research was conducted by the Trans Health Research Lab at the University of Waikato, and designed in collaboration with a Community Advisory Group, with additional peer review of the survey questionnaire by health professionals and government agencies.

16. Trans and non-binary people were asked the following question, in a section of the Counting Ourselves survey about their experiences when accessing gender affirming healthcare:

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<sup>8</sup> <https://www.florenceashley.com/resources.html>

<sup>9</sup> E. Coleman, W. Bockting, M. Botzer, P. Cohen-Kettenis, G. DeCuypere, J. Feldman, L. Fraser, J. Green, G. Knudson, W. J. Meyer, S. Monstrey, R. K. Adler, G. R. Brown, A. H. Devor, R. Ehrbar, R. Ettner, E. Eyler, R. Garofalo, D. H. Karasic, A. I. Lev, G. Mayer, H. Meyer-Bahlburg, B. P. Hall, F. Pfaefflin, K. Rachlin, B. Robinson, L. S. Schechter, V. Tangpricha, M. van Trotsenburg, A. Vitale, S. Winter, S. Whittle, K. R. Wylie & K. Zucker (2012) “Standards of Care for the Health of Transsexual, Transgender, and Gender-Nonconforming People”, Version 7, *International Journal of Transgenderism*, 13:4, 165-232, DOI: 10.1080/15532739.2011.700873

<sup>10</sup> See for example, these position statements from the [NZ Association of Counsellors](#) and the [NZ Psychological Society](#), this media release from the [NZ Medical Association](#) and the [Aotearoa New Zealand Association of Social Workers](#).

*“Has any professional (such as psychiatrist, psychologist, or counsellor) ever tried to make you identify only with your sex assigned at birth (in other words, tried to stop you being trans or non-binary)?”*

17. The Counting Ourselves community report published in 2019 identified that more than one in six of all participants (17%) reported that a professional had tried to stop them being trans or non-binary and a further 12% were not sure if this had happened to them. Out of the 610 participants who had ever spoken to a health professional about their gender, 1 in 5 (20%) reported this had happened to them.
18. This lifetime exposure to gender identity (GI) conversion practices is almost equivalent to the 19.6% of participants who gave this response to a very similar 2015 US Trans Survey question.<sup>11</sup> It is possible that the level of such conversion practices is higher in Aotearoa New Zealand than in the United States, since the US Trans Survey question also encompassed conversion practices from religious advisors.
19. The Trans Health Research Lab has undertaken further detailed analysis of the Counting Ourselves data to explore the relationship between GI conversion practices and mental health. The following findings will soon be published in a peer-reviewed international academic journal.<sup>12</sup>
20. The Counting Ourselves data show that exposure to conversion practices is associated with worse mental health. Participants who had experienced GI conversion practices were more likely than those who did not to report each of the following: psychological distress, non-suicidal self-injury (NSSI), suicidal ideation and suicide attempts.
21. After accounting for age and gender, exposure to GI conversion practices was significantly associated with worse outcomes on all of these mental health variables. Compared with those without such exposure, those who had experienced GI conversion practices had:
  - higher reported psychological distress, which includes depression and anxiety
  - more than two times the odds of increased NSSI and suicidal ideation and
  - almost four times the odds of increased suicide attempts.

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<sup>11</sup> Turban JL, Beckwith N, Reisner SL, Keuroghlian AS. (2020) “Association Between Recalled Exposure to Gender Identity Conversion Efforts and Psychological Distress and Suicide Attempts Among Transgender Adults.” *JAMA Psychiatry*. 2020;77(1):68–76. doi:10.1001/jamapsychiatry.2019.2285

<sup>12</sup> Veale, J. F., Tan, K. K. H., & Byrne, J. L. (in press). “Gender identity change efforts faced by trans and non-binary people in New Zealand: Associations with demographics, family rejection, internalized transphobia, and mental health.” *Psychology of Sexual Orientation and Gender Diversity*.

As well as being statistically significant, these are clinically significant effect sizes.

22. The Counting Ourselves researchers also found evidence of a link between experiencing GI conversion practices and higher levels of internalised transphobia, and worse mental health outcomes. In addition, those who had experienced family rejection were more likely to report exposure to GI conversion practices than those who had not been rejected. This suggests that such practices could be one of the ways that family rejection can cause psychological harm for trans people.
23. The Counting Ourselves findings are in accordance with the professional consensus about the harmful implications of conversion practices for trans people's mental health and wellbeing. While this research focused more narrowly on GI conversion practices by mental health professionals, international evidence confirms that such practices occur in other settings, including within families and by religious and faith-based leaders, and there is no reason to expect that GI conversion practices from these perpetrators would be any less harmful.<sup>13</sup>
24. A recent qualitative study in Aotearoa New Zealand identified the compounding impact on rainbow ethnic young people when their identity is rejected by family members and framed as incompatible with their religious beliefs. The research report noted that, "[p]arents from religious backgrounds often used quotes and interpretations from religious books to reason with their children about what they saw as a lifestyle that went against the religious values with which they had been raised".<sup>14</sup>
25. PATHA believes that any measures to reduce the harm caused by GI conversion practices should not be restricted to regulating the actions of health professionals but should also seek to address the actions of other perpetrators, including in religious and community settings.

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<sup>13</sup> Turban JL, Beckwith N, Reisner SL, & Keuroghlian AS. (2020) "Association between recalled exposure to gender identity conversion efforts and psychological distress and suicide attempts among transgender adults." *JAMA Psychiatry*. 2020;77(1):68.

<sup>14</sup> Nakhid, C., Fu, M. & Yachinta, C. (2020) Letting In - Closing Out: Perspectives and experiences of 'coming out' for queer/rainbow ethnic young people in Aotearoa New Zealand.

## Clause 4 - Interpretation

### ***Defining sexual orientation, gender identity, gender expression and sex characteristics***

26. PATHA notes that the Bill refers to ‘*sexual orientation*’, ‘*gender identity*’, and ‘*gender expression*’, but that these terms are not defined within the Bill. Other comparable legislation, including Victoria’s *Change or Suppression (Conversion) Practices Prohibition Act 2021* (the ‘Victorian Act’), uses definitions based on those contained in the *Yogyakarta Principles on the application of international human rights law in relation to sexual orientation and gender identity*<sup>15</sup> and clarified in the *Yogyakarta Principles Plus 10* in 2017.<sup>16</sup> The *Yogyakarta Principles* address a broad range of international human rights standards and their application to sexual orientation and gender identity, based on existing and evolving international human rights jurisprudence.
27. Conversion practices, like discrimination, can be directed at someone’s actual or perceived sexual orientation, gender identity or gender expression, or their sex characteristics. The *Yogyakarta Principles* avoid using specific identity terms, since these evolve and change over time and vary across language and cultural contexts. Attempts to change or suppress someone’s sexual orientation, gender identity, gender expression or sex characteristics are harmful whatever specific terms someone uses to define their identity, including whether they are questioning or redefining that identity.
28. One of the human rights experts involved in the drafting of the *Yogyakarta Principles plus 10* was Victor Madrigal-Borloz, the United Nations Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity. In that role, he has published a report to the United Nations calling for the banning of conversion practices.<sup>17</sup>

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<sup>15</sup> For definitions of sexual orientation and gender identity, see [The Yogyakarta Principles: Principles on the application of international human rights law in relation to sexual orientation and gender identity](#) (Geneva, 2007) p. 6

<sup>16</sup> For definitions of gender expression and sex characteristics, see [The Yogyakarta Principles plus ten: Additional principles and state obligations on the application of international human rights law in relation to sexual orientation, gender identity, gender expression and sex characteristics to complement the Yogyakarta Principles](#) (Geneva, 2017) p. 6

<sup>17</sup> Human Rights Council. 2020. *Practices of so-called “conversion therapy”. Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity*, 1 May 2020, A/HRC/44/53. <https://undocs.org/A/HRC/44/53>

## Recommendation 1

29. Define sexual orientation and gender identity in the Bill in line with sections 59(3) and 59(1) respectively of the Victorian Act, and gender expression and sex characteristics in the Bill in line with the *Yogyakarta Principles Plus 10*, as follows:

- *Sexual orientation* means a person's emotional, affectional and sexual attraction to, or intimate or sexual relations with, persons of a different gender or the same gender or more than one gender.
- *Gender identity* means a person's gender-related identity, which may or may not correspond with their designated sex at birth, and includes the personal sense of the body (whether this involves medical intervention or not) and other expressions of gender, including dress, speech, mannerisms, names and personal references.
- *Gender expression* means a person's presentation of the person's gender through physical appearance – including dress, hairstyles, accessories, cosmetics – and mannerisms, speech, behavioural patterns, names and personal references, and noting further that gender expression may or may not conform to a person's gender identity.
- *Sex characteristics* means a person's physical features relating to sex, including chromosomes, genitals, gonads, hormones, and other reproductive anatomy, and secondary features that emerge from puberty.

### ***Conversion practices directed towards a person because of their innate variation of sex characteristics***

30. PATHA's work is focused on improving the health of transgender people in Aotearoa, including those transgender people who are also intersex - born with innate variations of sex characteristics. Transgender health issues are distinct from intersex health issues, but there are shared concerns relating to bodily autonomy and the need for a healthcare system that upholds human rights. We are concerned that the proposed Bill does not adequately protect intersex people from harmful conversion practices, particularly in medical settings.

31. In developing this recommendation we have spoken with intersex community advocates. It is essential that intersex communities and organisations are engaged closely in the processes of developing this Bill and implementing the civil and criminal processes that result. This should include specific resourcing for intersex organisations and people with innate variations of sex characteristics to participate in this work.

32. People who are intersex, or born with innate variations of sex characteristics, are often subject to medical and social practices that are performed with the intention of changing or suppressing the individual's sexual orientation, gender identity, gender expression, or their variation of sex characteristics. The proposed Bill does not provide protection against conversion practices directed towards an intersex person's innate variation of sex characteristics.

33. The Regulatory Impact Statement notes on page 15 that protection from conversion practices based on a person's variation of sex characteristics was not included within the scope of the Bill because "that is more appropriately addressed through the health system than the justice system." Page 4 provides further information about this decision:

*"Some stakeholders have suggested that sex characteristics and surgical sex assignment of intersex children should also be included. However, the issues and potential interventions involved in changing sex characteristics are materially different from those attempting to change or suppress sexual orientation and gender identity and expression.*

*The inclusion of variations of sex characteristics in the prohibition of conversion practices could add significant complexity to the policy and legislation. The issues for, and experiences of, intersex people are important and merit specific consideration rather than as an addition to this work. We understand that the Ministry of Health will develop a rights-based protocol to prevent unnecessary medical interventions on intersex children."*

34. There are some overlaps between PATHA members and those health professionals and specialities supporting intersex people's right to bodily autonomy and informed consent. PATHA strongly supports the need for the Ministry of Health to prioritise this long overdue work, in partnership with intersex people and organisations such as Intersex Trust Aotearoa New Zealand (ITANZ). This is part of a broader need to address concerns raised by United Nations mechanisms about ending non-consensual medical interventions performed on people with innate variations of sex characteristics.<sup>18</sup>

35. PATHA considers that a rights-based protocol to prevent unnecessary medical interventions is essential work that can occur alongside clear legislative prohibition of conversion practices that attempt to change or suppress a intersex person's innate sex characteristics.

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<sup>18</sup> Committee on the Rights of the Child. (2016) *Concluding observations on the fifth periodic report of New Zealand*. CRC/C/NZL/CO/5, 21 October 2016, at 25(b) - 25(e). <https://undocs.org/CRC/c/nzl/co/5>. Human Rights Council. (2013) Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, 1 February 2013, A/HRC/22/53. [https://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A.HRC.22.53\\_English.pdf](https://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A.HRC.22.53_English.pdf)

While many such practices are likely to occur within medical settings, overseas experience is that parents who are not supported to accept their child’s bodily diversity may also seek out other forms of conversion practices, including those conducted in community, religious or faith-based settings. This is particularly the case if a child’s variation of sex characteristics is perceived to mean their child has, or will develop, a diverse gender or sexual orientation too. Therefore, it is important that people with innate sex characteristics have the same protection as other groups, against conversion practices wherever they might happen, including by people other than health professionals.

36. PATHA notes that there have been discussions in Canada about ways that provisions prohibiting conversion practices can encompass the specific experiences of people with innate variations of sex characteristics. One draft model law, developed in consultation with intersex people and organisations in North America, proposes the following wording:

1. (2) *Conversion practices include: . . .*

*g. Surgical or hormonal interventions relating to an intersex trait unless*

*(i) the person requests it and provided free and informed consent or assent, or*

*(ii) it is strictly necessary and urgent to protect the life or physical health of the person, excluding from consideration social factors such as psychosocial development, atypical appearance, capacity for future penetrative sexual or procreative activity, or ability to urinate standing up; and*

*the conditions referred to in subparagraph (g)(i) or (g)(ii) were duly documented at the time of the intervention.<sup>19</sup>*

## **Recommendation 2**

37. Protect intersex people from conversion practices by:

- a. Including “sex characteristics” within the meaning of conversion practices outlined in section 5. Suggested wording is provided in Recommendation 3 below.

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<sup>19</sup> Florence Ashley, (2020) “Torture isn’t therapy: banning conversion practices targeting transgender people”, section 1(2)(g). Also available as Ashley, F. (2019). Model law—prohibiting conversion practices, section 12. SSRN 3398402, and due to be published as a book in 2022. Cited in Human Rights Council. 2020. *Practices of so-called “conversion therapy”*. Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, 1 May 2020, A/HRC/44/53. The draft model law is available online at: [https://www.ohchr.org/Documents/Issues/SexualOrientation/IESOGI/Academics/Ashley\\_Model\\_Law\\_on\\_Prohibiting\\_Reparative\\_Practices\\_2.4.docx](https://www.ohchr.org/Documents/Issues/SexualOrientation/IESOGI/Academics/Ashley_Model_Law_on_Prohibiting_Reparative_Practices_2.4.docx)

- b. Including an exemption in section 5(2) to allow for medical interventions that are performed for legitimate purposes, such as:
- a health service performed with the intention of changing an individual's innate variation of sex characteristics where:*
- (i) the person requests it and provides free and informed consent or assent, or*
- (ii) it is strictly necessary and urgent to protect the life or physical health of the person, excluding from consideration social factors such as psychosocial development, atypical appearance, capacity for future penetrative sexual or procreative activity, or ability to urinate standing up; and*
- the conditions referred to in (i) or (ii) were duly documented at the time of the intervention.*

## **Clause 5: Meaning of a Conversion Practice**

### ***Clause 5(1) - Definition of a conversion practice***

38. As Principle 3 of the Yogyakarta Principles states:

*"Each person's self-defined sexual orientation and gender identity is integral to their personality and is one of the most basic aspects of self-determination, dignity and freedom."<sup>20</sup>*

39. An important aspect intrinsic to this principle is that a person's sexual orientation and gender are self-defined. This element of self-determination would be better reflected if the phrase "as defined by that individual" was added to subclauses 5(1)(a) and 5(1)(b) in the Bill.

40. PATHA notes that some conversion practices may take the form of psychosocial pressure in order to trigger the individual to induce change themselves. Often conversion practices are undertaken by those closest to a trans person's life, such as family members they love, health professionals they rely on for care, and religious or other teachers they are taught to respect. Internalised transphobia may lead trans people to seek to change or suppress their identity in order to gain acceptance and approval from their family or community. As the detailed analysis of the Counting Ourselves data above demonstrates, there is evidence of a

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<sup>20</sup> [The Yogyakarta Principles: Principles on the application of international human rights law in relation to sexual orientation and gender identity](#) (Geneva, 2007), p.11

link between experiencing gender identity conversion practices and higher levels of internalised transphobia and worse mental health outcomes.

41. Victoria's *Change or Suppression (Conversion) Practices Prohibition Act 2021* explicitly identifies that the responsibility in these instances may lie with a third party who has induced someone to change or suppress their identity. Specifically, subsection 5(1)(b)(ii) states that a change or suppression practice can be;

*“(b) for the purpose of—*

*(i) changing or suppressing the sexual orientation or gender identity of the person; or*

*(ii) inducing the person to change or suppress their sexual orientation or gender identity.”*

42. Given the level of psychological pressure transgender and other rainbow people may experience to change or suppress their identity, and the potentially negative impacts on a person's mental health and wellbeing, PATHA supports such a clarification in the New Zealand Bill too.

43. In addition, PATHA supports the extension of the Bill's provisions to encompass conversion practices that attempt to change or suppress a person's innate sex characteristics. As stated in Principle 32 of the Yogyakarta Principles:

*“Everyone has the right to bodily and mental integrity, autonomy and self-determination irrespective of sexual orientation, gender identity, gender expression or sex characteristics. Everyone has the right to be free from torture and cruel, inhuman and degrading treatment or punishment on the basis of sexual orientation, gender identity, gender expression and sex characteristics. No one shall be subject to invasive or irreversible medical procedures that modify sex characteristics without their free, prior and informed consent, unless necessary to avoid serious, urgent and irreparable harm to the concerned person.”<sup>21</sup>*

44. Extending the Bill's definition of conversion practices to include those directed towards a person because of their sex characteristics would provide some legal redress against forced, non-consensual medical procedures that attempt to change or suppress a person's innate variation of sex characteristics.

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<sup>21</sup> [The Yogyakarta Principles plus ten: Additional principles and state obligations on the application of international human rights law in relation to sexual orientation, gender identity, gender expression and sex characteristics to complement the Yogyakarta Principles](#) (Geneva, 2017) p. 10

### Recommendation 3

45. Amend sub-clause 5(1) to read:

- (1) In this Act, conversion practice means any practice that—*
- (a) is directed towards an individual because of the individual's sexual orientation, gender identity, or gender expression as defined by that individual, or their sex characteristics; and*
  - (b) is performed with the intention of*
    - (i) changing or suppressing the individual's sexual orientation, gender identity, or gender expression as defined by that individual, or their sex characteristics or*
    - (ii) inducing the person to change or suppress their sexual orientation, gender identity, or gender expression, or their sex characteristics.*

#### **Clause 5(2) - What a conversion practice does not include**

46. PATHA supports a positive framing of practices or conduct that do not fall within the scope of this Bill, including those performed by health professionals. This has the dual purpose of clarifying the Bill's provisions and affirming its objective to "affirm the dignity of all people and that no sexual orientation or gender identity is broken and in need of fixing".

47. PATHA's proposed rewording is mirrored on section 5(2)(a) of Victoria's *Change or Suppression (Conversion) Practices Prohibition Act 2021*.

- (2) For the purposes of subsection (1), a practice or conduct is not a change or suppression practice if it—*
- (a) is supportive of or affirms a person's gender identity or sexual orientation including, but not limited to, a practice or conduct for the purposes of—*

#### **Overly broad exemptions in subclauses 5(2)(a) and (e)**

48. Without such a clear statement upfront about the purpose of excluding some conduct and practices, we have significant concerns about the breadth of two subclauses exempted under clause 5(2), specifically:

- (a) a health service provided by a health practitioner in accordance with the practitioner's scope of practice; or
- (e) facilitating an individual's coping skills, development, or identity exploration, or facilitating social support for the individual;

49. While we appreciate the likely intent of such provisions, both have significant potential to enable conversion practices. Specifically:

- *Subclause 5(2)(a)* may enable health practitioners to continue using coercive practices that they describe as “talk therapies” to attempt to change or suppress a client’s identity. Practitioners may claim that their client’s sexual orientation, gender identity or gender expression has developed because of a mental health condition (e.g. childhood trauma and disordered attachment, or Obsessive-Compulsive Disorder).<sup>22</sup>) They may undertake to change or suppress the client’s identity under the guise of exploring and treating the mental health condition.

This is despite such conduct being deemed unethical, contrary to best practice and in opposition to an overwhelming body of scientific evidence about the ineffectiveness and harm of conversion practices.<sup>23</sup> Transgender and non-binary people are vulnerable to such arguments about the interplay between trauma and minority stress which places them at risk of significant negative health and mental health outcomes as a result of these conversion practices.<sup>24</sup>

- *Subclause 5(2)(e)* may facilitate the ongoing use of destructive conversion practices framed as identity exploration or social support, including practices centred around pressure from others within the person’s community who have undergone conversion practices.

50. PATHA’s view is that the interplay between the Health Practitioner’s Competence Assurance Act and other clauses within the proposed Bill provides sufficient protection for health practitioners without the need to include these subclauses. That is, any affirming practices

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<sup>22</sup> Wright T, Candy B, King M (2018) “Conversion therapies and access to transition-related healthcare in transgender people: a narrative systematic review” *BMJ Open* 2018;8:e022425. doi: 10.1136/bmjopen-2018-022425. Kinitz DJ, Goodyear T, Dromer E, Gesink D, Ferlatte O, Knight R, Salway T. (2019) “ ‘Conversion Therapy’ Experiences in Their Social Contexts: A Qualitative Study of Sexual Orientation and Gender Identity and Expression Change Efforts in Canada: Les expériences de “thérapie de conversion” dans leur contexte social: une étude qualitative des efforts de changement de l’orientation sexuelle, de l’identité de genre et de l’expression de genre au Canada.” *Can J Psychiatry*. 2021 Jul 9:7067437211030498. doi: 10.1177/07067437211030498. Epub ahead of print. PMID: 34242106.

<sup>23</sup> Shidlo, A., & Schroeder, M. (2002). “Changing sexual orientation: A consumers’ report.” *Professional Psychology: Research and Practice*, 33(3), 249–259. doi:10.1037/0735-7028.33.3.249. Turban JL, Beckwith N, Reisner SL, & Keuroghlian AS. (2020) “Association between recalled exposure to gender identity conversion efforts and psychological distress and suicide attempts among transgender adults.” *JAMA Psychiatry*. 2020;77(1):68. The Trevor Project (2019) National Survey on LGBTQ Mental Health 2019. <https://www.thetrevorproject.org/survey-2019/?section=Conversion-Therapy-Change-Attempts>. Published June 2019. See also, position statements from: [NZ Association of Counsellors](#) and the [NZ Psychological Society](#).

<sup>24</sup> Playdon, Z. (2016). “Unequal treatment of transgender people.” *BMJ*, i2329. doi:10.1136/bmj.i2329

which could be described by exclusions (a) and (e) are already protected by other exclusions. Conversely, it is our concern that (a) and (e) as currently drafted could provide additional protection for people who are engaging in harmful practices.

51. Given the harm caused by conversion practices, their persistence despite the condemnation of by health professional bodies, and the deregulated nature of parts of the health sector, this extra level of protection for unethical health practitioners is unwarranted and harmful.
52. PATHA recommends that both of these sub-clauses are deleted. If they are retained, it is imperative that they are confined to those instances where the practice or conduct is supportive of or affirms a person's self-defined sexual orientation, gender identity, or gender expression, or their innate variation of sex characteristics.

#### ***Support for exemptions in subclauses 5(2)(b) and (c)***

53. PATHA welcomes the inclusion of subclauses (b) and (c), which clarify that conversion practices do not include health practitioners providing gender-affirming healthcare, or family and friends supporting social aspects of an individual's expression of their gender or gender transition.
54. We suggest clarifying subclause 5(2)(b) to include the wording '*as defined by that individual*'. This would better reflect a patient-centred, self-determination approach, and would avoid this exclusion being misinterpreted to support harmful practice.

#### **Recommendation 4**

55. Amend clause 5(2) of the Bill as follows:

*(2) However, conversion practice does not include a practice or conduct that is supportive of or affirms a person's self-defined sexual orientation, gender identity, or gender expression or their innate variation of sex characteristics, including, but not limited to, a practice or conduct for the purposes of*

*~~(a) a health service provided by a health practitioner in accordance with the practitioner's scope of practice; or~~*

*~~(b) (a) assisting an individual who is undergoing, or considering undergoing, a gender transition as defined by that individual; or~~*

*~~(c) (b) assisting an individual to express their gender identity; or~~*

*~~(d) (c) providing acceptance, support, or understanding of an individual; or~~*

*~~(e) facilitating an individual's coping skills, development, or identity exploration, or facilitating social support for the individual; or~~*

*(f) (d) the expression only of a religious principle or belief made to an individual that is not intended to change or suppress the individual's sexual orientation, gender identity, or gender expression.*

*(e) a health service performed with the intention of changing an individual's innate variation of sex characteristics where:*

*(i) the person requests it and provides free and informed consent or assent, or*

*(ii) it is strictly necessary and urgent to protect the life or physical health of the person, excluding from consideration social factors such as psychosocial development, atypical appearance, capacity for future penetrative sexual or procreative activity, or ability to urinate standing up; and*

*the conditions referred to in (i) or (ii) were duly documented at the time of the intervention.*

## **Clause 8: Ensuring criminal redress for conversion practices is available for people of any age**

56. Clause 8 introduces an offence to perform conversion practice on persons under the age of 18 years or those lacking decision-making capacity. Given the Bill's objective to "prevent the harm conversion practices cause in New Zealand" it is unclear why those aged 18 or older are not covered under this provision, and only have access to a criminal remedy if they meet the higher legal threshold of experiencing "serious harm" (in clause 9).

57. Many of those who undergo conversion practices are aged 18 or over, including youth who may still be living with and dependent on their family. The Regulatory Impact Statement notes on page 15 that the rationale for not having the same criminal offences and penalties for conversion practices performed on all people, regardless of age was "it does not recognise the increased agency of adults to willingly participate". However, these practices often occur in the context of coercion.

58. The age distinction in clause 8 seems to contradict clause 10 of the Bill which recognises that it is not reasonable to consider that a person can willingly consent to these practices. PATHA strongly supports Clause 10 which provides that consent is not a defence to criminal charges under either clause 8 or 9.

59. From a health perspective, the age restriction in clause 8 also fails to take into account the long-standing impacts on a person's life if they grow up knowing that an intrinsic part of

who they are is considered to be unacceptable, sick, evil, or wrong. Nor does it recognise that many young people aged 18 or older are still dependent on family and wider community support, particularly if they are financially dependent and living at home. This legislation is an opportunity to provide them with the same degree of protection from conversion practices as others, both by removing the age limit in clause 8 and, as already noted, adding “inducing” someone to change or suppress their identity into the definition of a conversion practice.

60. Notably, Victoria’s *Change or Suppression (Conversion) Practices Prohibition Act 2021* does not have such age distinctions. Instead, it introduces two offences, one causing injury and the other causing serious injury. One option would be to mirror Victoria’s approach in this Bill by renaming clause 8 as an “offence to perform conversion practice that causes harm”. However, to do so would weaken the protection that clause 8 in the Bill currently provides because minors and those who have limited decision-making capacity would only be protected from conversion practices in instances where they can prove the harm they have experienced.

61. PATHA would not want to see the protection in clause 8 restricted in this way. Instead, we recommend that the protections in clause 8 are expanded to include anyone, regardless of their age or decision-making capacity. In doing so, the Bill strongly conveys that anyone, whatever their age, is protected from conversion practices.

#### **Recommendation 5**

62. Amend clause 8(1) to make it an offence to perform a conversion practice irrespective of the person’s age, for example by rewording section 8 to read:

#### **8. Offence to perform conversion practice**

(1) A person commits an offence if the person performs a conversion practice on an individual or was negligent as to whether their course of action constituted a conversion practice

#### **Explicit clarification of some provisions**

63. The current Bill lacks some of the explicit wording found in other jurisdictions, where provisions specifically criminalise facilitating access to conversion practices.

64. There are some statements in the Regulatory Impact Statement and the Bill’s explanatory note that are not clearly evident in the Bill as drafted. In particular, it is unclear whether the

criminal offences cover referring someone to conversion practices or facilitating someone being taken overseas for such practices.

65. The civil remedies through the Human Rights Commission could also benefit from clarification in the Bill's explanatory note and resources developed to promote the provisions once the law has been enacted. For example, it is our understanding that it will be unlawful under the Human Rights Act 1993 to refer someone to a conversion practice or remove them from New Zealand for this purpose (under new section 63A) or to advertise conversion practices (under section 67).

### ***Referring someone for conversion practices***

66. Currently criminal penalties for referring someone to conversion practices are only mentioned in the Regulatory Impact Statement. This states on page 13, in relation to the proposal in clause 8, that:

*“If a criminal offence is created, referring someone to conversion practices is likely to be covered by the existing provisions concerning parties to offences in the Crimes Act 1961. The relevant section of the Crimes Act would be cross-referenced in the legislation to make its application clear.”*

These cross-references are not included in the draft Bill and should be added.

67. This civil protection against referring someone to conversion practices appears to be covered in clause 15 of the Bill which inserts new section 63A into the Human Rights Act 1993. This includes making it unlawful to “arrange for a conversion practice to be performed on any other person”.
68. Again, it would be helpful if the Bill's explanatory note, and resources developed to promote the provisions once the law has been enacted, clarify that new section 63A of the Human Rights Act encompasses:
- referring people to conversion practices and
  - removing someone from NZ to send them to conversion practices

### ***Facilitating a person's removal from New Zealand for the purpose of a conversion practice***

69. Despite the following reassurance on page 14 of the Regulatory Impact Statement, there is no explicit provision in the Bill prohibiting removing a person from New Zealand for conversion practices:

*“A prohibition against conversion practices in New Zealand may lead to attempts to send people to other countries for conversion. All options would also include the creation of a specific criminal offence for the removal from New Zealand of anyone for the purposes of receiving conversion practices in another jurisdiction. The offence and its penalties would be linked to the criminal offences in the preferred option. This would clarify that it would be illegal to procure practices in another country that it would be illegal to procure in New Zealand.”*

70. One option would be to extend the offence detentions in subclauses 8(1) and 9(1) to also encompass “facilitates removal from New Zealand in order for a conversion practice to be performed on”.

#### **Recommendation 6**

71. Further amend subclauses 8(1) and 9(1) to clarify the criminal redress available against someone who:

- a. refers someone to conversion practices (for example through cross-reference to relevant provisions in the Crimes Act 1961) or
- b. facilitates a person’s removal from New Zealand for the purpose of a conversion practice

#### **Recommendation 7**

72. Clarify in the Bill that new section 63A in the Human Rights Act 1993, as inserted by clause 15 in the Bill, which makes it unlawful to arrange for a conversion practice to be performed, encompasses civil redress against someone who:

- a. refers someone to conversion practices or
- b. facilitates a person’s removal from New Zealand for the purpose of a conversion practice

### **Addressing gaps in the Bill**

#### ***Provide for development of an implementation plan***

73. PATHA strongly supports the Bill’s stated purposes - preventing harm caused by conversion practices and promoting respectful and open discussions regarding sexuality and gender. Achieving these purposes will require significant work outside of simply introducing new criminal and civil penalties for practitioners. We encourage the Government to commit to a wider programme of work that reduces the incidence of conversion practices in Aotearoa New Zealand and supports survivors to find justice and healing from their experiences.

74. We understand that as a result of a January 2021 decision by the Superior Court in *Centre for Gender Advocacy c. Attorney General of Quebec*, the Quebec Government is required to adopt and make public a government action plan to fight conversion practices. Specifically, the decision states:

*“14. To ensure this Act’s implementation, the Government must, not later than 11 December 2021, adopt and make public a government action plan to fight conversion therapy, specifying the activities the Government plans on carrying out to achieve the goals pursued. The conditions, terms and schedule for carrying out the activities provided for in the action plan, and those related to achieving the goals pursued, are determined by the Government. Every year, the Minister must submit a report to the Government on the activities carried out under the government action plan. The Minister must make the report public within 60 days after submitting it to the Government.”<sup>25</sup>*

**A. Develop a specific pathway for civil redress**

75. No detail is available in the Bill about the nature of the civil redress scheme to be administered by the Human Rights Commission, or how this will be resourced and designed to support justice and healing. The implication is that civil redress may rely on the Commission’s existing systems and resources. This may not be suitable for survivors of conversion practices - for example, mediation between a survivor and practitioner has the potential to be retraumatizing.

76. We recommend that as part of implementing this Bill, the Human Rights Commission is resourced to develop a specific pathway for conversion practices complaints, designed and developed in consultation with rainbow community organisations, survivors of conversion practices and relevant health practitioners.

**B. Provide education for health professionals, communities and whānau**

77. PATHA considers that education of health professionals, communities and whānau is essential for preventing conversion practices. When people believe that it is possible and beneficial to change or suppress someone’s gender or sexual orientation, these beliefs are often rooted in misinformation and lack of understanding about rainbow identities.

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<sup>25</sup> *Centre for Gender Advocacy c. Attorney General of Quebec*, 2021 QCCS 191 (CanLII). <https://www.canlii.org/en/qc/qccs/doc/2021/2021qccs191/2021qccs191.html?autocompleteStr=centre%20for%20gender%20advo&autocompletePos=4>

78. Medical education and ongoing professional development about rainbow lives and experiences play an important role in informing the practice of health professionals. Currently most health professionals in Aotearoa do not receive adequate education on these topics in their initial training, or through ongoing professional development. A draft model law developed in Canada suggests that the mandate of professional licensing and certifying bodies should include discouraging conversion practices and educating members about the dangers of conversion practices.<sup>26</sup>
79. It should also be noted that family rejection can be a significant detriment to the wellbeing of transgender and other rainbow people.<sup>27</sup> This rejection may lead to families pressuring rainbow people into accessing conversion practices. As part of preventing the demand for conversion practices, it would be beneficial to also provide families with support and education relating to transgender and other rainbow identities, so that they are equipped and confident to support rainbow family members. This could involve peer support groups with other parents who are going through a similar journey, culturally relevant resources about rainbow identities, or more focused family counselling.
80. Section 17 of Victoria's *Change or Suppression (Conversion) Practices Prohibition Act 2021* outlines the expanded functions and powers of the Victorian Equal Opportunity and Human Rights Commission in relation to conversion practices, including to develop and provide education about such practices, including for those engaging in such practices.
81. The Bill's Regulatory Impact Statement notes that "There are also likely to be costs associated with the provision of education materials on the changes..." however it is unclear what form such education materials would take. The Bill does not detail mechanisms for education and awareness raising, and there is an implication that these would rely on the Human Rights Commission's existing functions.
82. The Bill's focus on civil redress recognises the important role of the dispute resolution and mediation process that the Human Rights Commission provides. However, this is a reactive

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<sup>26</sup> Florence Ashley, (2020) "Torture isn't therapy: banning conversion practices targeting transgender people", section 12. Also available as Ashley, F. (2019). Model law—prohibiting conversion practices, section 12. SSRN 3398402, and due to be published as a book in 2022. Cited in Human Rights Council. 2020. *Practices of so-called "conversion therapy"*. Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, 1 May 2020, A/HRC/44/53. The draft model law is available online at: [https://www.ohchr.org/Documents/Issues/SexualOrientation/IESOGI/Academics/Ashley\\_Model\\_Law\\_on\\_Prohibiting\\_Reparative\\_Practices\\_2.4.docx](https://www.ohchr.org/Documents/Issues/SexualOrientation/IESOGI/Academics/Ashley_Model_Law_on_Prohibiting_Reparative_Practices_2.4.docx)

<sup>27</sup> Klein, A., & Golub, S. A. (2016). "Family Rejection as a Predictor of Suicide Attempts and Substance Misuse Among Transgender and Gender Nonconforming Adults." *LGBT Health*, 3(3), 193–199. <https://doi.org/10.1089/lgbt.2015.0111>

response to individual complaints rather than a proactive approach to inform survivors, parents, whānau, health professionals, schools and religious and faith-based communities about the harm caused by conversion practices and the importance of inclusion and acceptance of sexual and gender diversity.

83. A range of education initiatives are needed to change attitudes and practices across healthcare settings and communities. These should be led by people from the relevant communities and professions - for example, rainbow people within faith and ethnic communities should be resourced to have conversations about rainbow identities and inclusion.

84. A range of education initiatives are needed to change attitudes and practices across healthcare settings and communities. These should be led by people from the relevant communities and professions - for example, rainbow people within faith and ethnic communities should be resourced to have culturally relevant conversations about rainbow identities and inclusion.

### **C. Provide for free, rainbow-affirming psychosocial support**

85. Conversion practices can have a serious impact on an individual's wellbeing with many survivors describing their experiences as abusive and traumatic.<sup>28</sup> Research has shown that conversion practices can lead to individuals internalising prejudiced attitudes and experiencing higher rates of self-harm.<sup>29</sup> Where family members have been involved in conversion practices, either directly or through referrals to others, this can cause significant and ongoing harm to family relationships.

86. For these reasons, it is important that survivors of conversion practices have access to specialist psychosocial support to help make sense of their experiences and develop a positive sense of their own identity. Specialist family therapy may also support survivors and whānau to repair relationships.

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<sup>28</sup> Craig Hoyle, February 9 2020, 'Leaving the Exclusive Brethren: 10 years on' <https://www.stuff.co.nz/life-style/well-good/inspire-me/119304121/leaving-the-exclusive-brethren-10-years-on>. Trinity Thompson Browne, 17 February 2021, 'Surviving conversion therapy as a young Māori takatāpui autistic person' <https://www.renews.co.nz/surviving-conversion-therapy-as-a-young-maori-takatapui-autistic-person/>. Doron Semu, 6 March 2021, 'There was no fix for me': A conversion therapy survivor speaks out' <https://tpplus.co.nz/community/there-was-no-fix-for-me-a-conversion-therapy-survivor-speaks-out/>

<sup>29</sup> Meanley, S., Haberman, S. A., Okafor, C. N., Brown, A., Brennan-Ing, M., Ware, D., ... & Plankey, M. W. (2020). Lifetime exposure to conversion therapy and psychosocial health among midlife and older adult men who have sex with men. *The Gerontologist*, 60(7), 1291-1302.

87. Psychosocial support should be trauma-informed and affirming of rainbow identities as a normal part of human diversity. Services should be co-designed with survivors of conversion practices, and available for free to anyone who has survived conversion practices, including in response to practices that occurred before this Bill was introduced. Psychosocial support should be offered to anyone who has survived conversion practices, regardless of whether their experience is deemed to have caused them “serious harm”.
88. The Bill’s Regulatory Impact Statement notes “There are also likely to be costs associated with... increased support services for survivors.” However, the Bill does not contain provisions for support for survivors, and it is important to note that there are no existing support services in New Zealand that are specifically developed for survivors of conversion practices.
89. To provide access to psychosocial support, it would be best to provide sustained funding for a rainbow-led community organisation to design a specialist service that supports recovery from conversion practices. This expertise should extend to knowledge about the different forms of conversion practices, including those targeted at transgender people because of their gender identity and expression, and skills in supporting rainbow people from diverse cultural backgrounds. It would also be beneficial to introduce mandatory training on rainbow identities and experiences for all people working in primary and secondary mental health, so that if survivors seek mental health support through the public health system, this is more likely to be rainbow-affirming.

## **Recommendation 8**

90. Require the Ministry of Justice and Human Rights Commission to develop an implementation plan within the first six months after approval, which includes:
- a. resourcing for the Human Rights Commission to develop a specific pathway for conversion practices complaints, designed and developed in consultation with rainbow community organisations, survivors of conversion practices and relevant health practitioners
  - b. establishment and ongoing funding for a specialist psychosocial support service for survivors of conversion practices and their whānau and
  - c. establishment and ongoing funding for education programmes for health professionals, communities and whānau about rainbow identities and experiences, and the harms of conversion practices.

### ***Include a timeframe for review of the law and implementation plan***

91. While PATHA strongly supports the intent of the current Bill, we note that it is being developed on a short timeframe, and consequently has had limited input from people and communities who have experienced conversion practices. Little information is available in the Bill about the nature of the civil redress scheme to be administered by the Human Rights Commission, or how this will be resourced and designed to support justice and healing.
92. We recommend that the Bill provide for a review once the civil and criminal processes are in place. A review should solely consider the extent to which the Bill's objectives have been met, including what more may be needed. It should not seek to relitigate the issues raised by the Bill or whether there is a need for conversion practices to be prohibited in Aotearoa. A review should engage with rainbow communities and people who have survived conversion practices. Section 57 of Victoria's *Change or Suppression (Conversion) Practices Prohibition Act 2021* provides an example of a review clause, requiring the state's Attorney-General to commission an independent review 2 years after the commencement of the Act.

### **Recommendation 9**

93. Require that an independent review of the operation and effectiveness of the Act and implementation plan be undertaken two years after the Act is commenced. This should consider the extent to which the Act is achieving its stated purposes, and any wider resourcing or work needed to support justice and healing for survivors of conversion practices.

### ***Remove charitable status of organisations that provide conversion practices***

94. The current Bill focuses on the actions of individual practitioners who undertake conversion practices. Some practitioners are supported by organisations that may offer conversion practices as a service, or may organise, advertise or refer people to conversion practices. The law should create liability for organisations that engage in conversion practices, alongside penalties for the individuals who directly undertake the practices.

### **Recommendation 10**

95. Include a provision in this Bill to amend the Charities Act 2005 to include "providing or arranging for conversion practices" within the meaning of "serious wrongdoing". This would clarify that engaging in conversion practices would be grounds for deregistration of an organisation from the Charities Register.

## Appendix 1: Collated Recommendations

### Recommendation 1

Define sexual orientation and gender identity in the Bill in line with sections 59(3) and 59(1) respectively of the Victorian Act, and gender expression and sex characteristics in the Bill in line with the *Yogyakarta Principles Plus 10*, as follows:

- *Sexual orientation* means a person's emotional, affectional and sexual attraction to, or intimate or sexual relations with, persons of a different gender or the same gender or more than one gender.
- *Gender identity* means a person's gender-related identity, which may or may not correspond with their designated sex at birth, and includes the personal sense of the body (whether this involves medical intervention or not) and other expressions of gender, including dress, speech, mannerisms, names and personal references.
- *Gender expression* means a person's presentation of the person's gender through physical appearance – including dress, hairstyles, accessories, cosmetics – and mannerisms, speech, behavioural patterns, names and personal references, and noting further that gender expression may or may not conform to a person's gender identity.
- *Sex characteristics* means a person's physical features relating to sex, including chromosomes, genitals, gonads, hormones, and other reproductive anatomy, and secondary features that emerge from puberty.

### Recommendation 2

Protect intersex people from conversion practices by:

- a. Including “sex characteristics” within the meaning of conversion practices outlined in section 5. Suggested wording is provided in Recommendation 3 below.
- b. Including an exemption in section 5(2) to allow for medical interventions that are performed for legitimate purposes, such as:

*a health service performed with the intention of changing an individual's innate variation of sex characteristics where:*

*(i) the person requests it and provides free and informed consent or assent, or*

*(ii) it is strictly necessary and urgent to protect the life or physical health of the person, excluding from consideration social factors such as psychosocial development, atypical appearance, capacity for future penetrative sexual or procreative activity, or ability to urinate standing up; and*

*the conditions referred to in (i) or (ii) were duly documented at the time of the intervention.*

### Recommendation 3

Amend sub-clause 5(1) to read:

- (1) *In this Act, conversion practice means any practice that—*
- (a) is directed towards an individual because of the individual’s sexual orientation, gender identity, or gender expression as defined by that individual, or their sex characteristics; and*
  - (b) is performed with the intention of*
    - (i) changing or suppressing the individual’s sexual orientation, gender identity, or gender expression as defined by that individual, or their sex characteristics or*
    - (ii) inducing the person to change or suppress their sexual orientation, gender identity, or gender expression, or their sex characteristics.*

### Recommendation 4

Amend clause 5(2) of the Bill as follows:

- (2) *However, conversion practice does not include a practice or conduct that is supportive of or affirms a person's self-defined sexual orientation, gender identity, or gender expression or their innate variation of sex characteristics, including, but not limited to, a practice or conduct for the purposes of*
- ~~(a) a health service provided by a health practitioner in accordance with the practitioner’s scope of practice; or~~*
  - ~~(b) (a) assisting an individual who is undergoing, or considering undergoing, a gender transition as defined by that individual; or~~*
  - ~~(c) (b) assisting an individual to express their gender identity; or~~*
  - ~~(d) (c) providing acceptance, support, or understanding of an individual; or~~*
  - ~~(e) facilitating an individual’s coping skills, development, or identity exploration, or facilitating social support for the individual; or~~*
  - (f) (d) the expression only of a religious principle or belief made to an individual that is not intended to change or suppress the individual’s sexual orientation, gender identity, or gender expression.*
  - (e) a health service performed with the intention of changing an individual’s innate variation of sex characteristics where:*
    - (i) the person requests it and provides free and informed consent or assent, or*
    - (ii) it is strictly necessary and urgent to protect the life or physical health of the person, excluding from consideration social factors such as psychosocial development, atypical appearance, capacity for future penetrative sexual or procreative activity, or ability to urinate standing up; and*
- the conditions referred to in (i) or (ii) were duly documented at the time of the intervention.*

## **Recommendation 5**

Amend clause 8(1) to make it an offence to perform a conversion practice irrespective of the person's age, for example by rewording section 8 to read:

### **8. Offence to perform conversion practice**

(1) A person commits an offence if the person performs a conversion practice on an individual or was negligent as to whether their course of action constituted a conversion practice

## **Recommendation 6**

Further amend subclauses 8(1) and 9(1) to clarify the criminal redress available against someone who:

- a. refers someone to conversion practices (for example through cross-reference to relevant provisions in the Crimes Act 1961) or
- b. facilitates a person's removal from New Zealand for the purpose of a conversion practice

## **Recommendation 7**

Clarify in the Bill that new section 63A in the Human Rights Act 1993, as inserted by clause 15 in the Bill, which makes it unlawful to arrange for a conversion practice to be performed, encompasses civil redress against someone who:

- a. refers someone to conversion practices or
- b. facilitates a person's removal from New Zealand for the purpose of a conversion practice

## **Recommendation 8**

Require the Ministry of Justice and Human Rights Commission to develop an implementation plan within the first six months after approval, which includes:

- a. resourcing for the Human Rights Commission to develop a specific pathway for conversion practices complaints, designed and developed in consultation with rainbow community organisations, survivors of conversion practices and relevant health practitioners
- b. establishment and ongoing funding for a specialist psychosocial support service for survivors of conversion practices and their whānau and
- c. establishment and ongoing funding for education programmes for health professionals, communities and whānau about rainbow identities and experiences, and the harms of conversion practices.

**Recommendation 9**

Require that an independent review of the operation and effectiveness of the Act and implementation plan be undertaken two years after the Act is commenced. This should consider the extent to which the Act is achieving its stated purposes, and any wider resourcing or work needed to support justice and healing for survivors of conversion practices.

**Recommendation 10**

Include a provision in this Bill to amend the Charities Act 2005 to include “providing or arranging for conversion practices” within the meaning of “serious wrongdoing”. This would clarify that engaging in conversion practices would be grounds for deregistration of an organisation from the Charities Register.