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Psychological Harm and the Prohibition of 'Conversion Therapy'

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ABSTRACT

Prohibition of 'conversion therapy' relating to homosexual and transgender people is being considered by Australian jurisdictions, with some (Queensland and ACT) already having passed legislation. What constitutes 'conversion therapy' is broadly defined and those in favour of prohibition claim that it is not only ineffective but extremely harmful. This paper examines these claims, their underlying assumptions, and the applicable body of scientific literature regarding 'conversion therapy' and concludes that the assumptions and claims of harm behind the call for prohibition are without foundation. Moreover, the disconnect between such claims and the lived experience of particular individuals and the community has led prohibition ideologues and legislators to become increasingly intolerant and authoritarian.

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I INTRODUCTION

Many recent legislative programs and corporate policies have been concerned with eliminating or reducing 'harm' – from drug injecting rooms, to child protection responses, to anti-bullying campaigns. That a person may be needlessly harmed – either physically or psychologically – is viewed as entirely unacceptable. Therefore, if harm can be substantially reduced or avoided altogether, government intervention through legislation and law enforcement agencies is warranted and justified.

But what exactly does 'harm' entail? What is the meaning and scope of the term? What behaviour may be regarded as harmful? What legal tests are involved? Breaching 'anti-harm' laws could have serious consequences, so defining what behaviour is and is not harmful is paramount. Legislative provisions and other enforceable policies must be clear in order to provide legal certainty.

This paper will examine how claims of 'harm' by various advocates have been used to influence legislators and the general public regarding the prohibition of so-called 'conversion therapy' (or 'reparative therapy') – the attempt to convert a person from homosexuality to heterosexuality, or to dissuade a person who expresses a gender identity different from their biological sex.

There is a popular, politically correct view that to do anything other than affirm non-traditional sexual identities and relationships will cause serious psychological harm to those involved, to the point where they may even resort to taking their own lives.

But are such claims justified? And what impact will the prohibition of these allegedly 'harmful' debates and activities have on child

protection measures, parental rights, and religious teaching?

Note that the following discussion uses the term 'homosexual' to refer to gay, lesbian, and bisexual orientations, and 'transgender' refers to someone who identifies as a gender different from their birth sex.

II DATA COLLECTION AND IDEOLOGICAL BIAS

Assessing the truth claims of those advocating for particular positions on controversial and politically charged issues is fraught with danger. Advocates for a particular position will cite research and studies that support their views, and either conveniently ignore contradictory research or dismiss it out of hand as flawed and invalid. Objectivity in social science research often gives way to ideological bias. As Sarewitz has pointed out:

> Alarming cracks are starting to penetrate deep into the scientific edifice. They threaten the status of science and its value to society. And they cannot be blamed on the usual suspects – inadequate funding, misconduct, political interference, an illiterate public. Their cause is bias, and the threat they pose goes to the heart of research.[1]

Many – if not most – studies on sexual orientation and transgenderism suffer from serious methodological flaws, the most common being the use of volunteers who are ideologically and politically motivated to provide responses favourable to their own agenda. Moreover, the sample sizes are often very small.

In addition, there are instances where researchers, editors and publishers have been hounded and bullied into withdrawing, disavowing, or

[1] D Sarewitz, 'Beware the Creeping Cracks of Bias' (2012) 485 *Nature* 149.

minimising the significance of otherwise sound research merely because it goes against the prevailing politically correct opinion. For example, Hindawi Limited, the publisher of *Depression Research and Treatment*, felt the need to 'express concern' about a paper they published by D Paul Sullins titled 'Invisible Victims: Delayed Onset Depression among Adults with Same-Sex Parents' after several readers raised concerns about this article, despite the fact that the proper review process was followed and the journal editor and peer reviewers believed the article worthy of publication.[2]

Similarly, psychiatrist Robert Spitzer published a paper in 2003 in the *Archives of Sexual Behavior* reporting that homosexuals and lesbians had found 'conversion therapy' beneficial, and some had experienced a transformation from a predominantly homosexual orientation to a predominantly heterosexual orientation.[3] However, after publication Spitzer received an 'outpouring of hatred' from LGBT activists who had once viewed him as a hero. Having spoken with Spitzer, Dutch psychologist Gerard van den Aardweg reported that he had 'nearly broken down emotionally after terrible personal attacks from militant gays and their supporters.'[4] After nearly a decade of abuse, at the age

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2 See 'Expression of Concern on "Invisible Victims: Delayed Onset Depression among Adults with Same-Sex Parents"' [2017] *Depression Research and Treatment* 4981984:1, 1. Note that Sullins had already published a thorough refutation of the criticisms raised against his research: D P Sullins, 'Response to: Comment on "Invisible Victims: Delayed Onset Depression among Adults with Same-Sex Parents"' [2016] *Depression Research and Treatment* 68343618:1-3.

3 Robert L Spitzer, 'Can Some Gay Men and Lesbians Change Their Sexual Orientation? 200 Participants Reporting a Change from Homosexual to Heterosexual Orientation' (2003) 32 *Archives of Sexual Behavior* 403. Spitzer was instrumental in pushing for the American Psychiatric Association to remove homosexuality as a mental disorder from their *Diagnostic and Statistical Manual of Mental Disorders*.

4 Interview with Gerard van den Aardweg, 'Frail and aged, a giant apologizes', *MercatorNet* (Web Article, 31 May 2012).

of 80 and suffering from Parkinson's Disease, Spitzer capitulated to the pressure and publicly apologized 'for making unproven claims of the efficacy of reparative therapy.' Spitzer asked the editor of the journal to retract the article, but the editor, Ken Zucker, refused to do so, telling Spitzer 'You didn't falsify the data. You didn't commit egregious statistical errors in analyzing the data. You didn't make up the data' and that a mere change in how the author interprets their own data is not grounds for retraction.[5]

It is important to note that Spitzer has never said that his observations and impressions about the reported changes in his subjects were false, or that they had lied to him. Indeed, his article examined this hypothesis, but Spitzer was convinced his subjects were reliable and telling the truth. Therefore, Spitzer's disavowment of his study does not change his results, and his 'apology' has no bearing on their validity.

There has also been cases of *ad hominem* and slanderous attacks on the credibility of some researchers. For example, a PhD dissertation by Toby Canning cited a 2001 paper by Stacey and Biblarz claiming that Paul Cameron, an opponent of same-sex parenting, 'was not only denounced by the American Sociological Association, but was also expelled from the American Psychological Association for willfully misrepresenting research on the punitive effects of gay male parenting on children' and referred to the psychological community's condemnation of his 'unethical practices.'[6] However, none of these

[5] Alice Dreger, 'How to Ex an "Ex-Gay" Study', *Psychology Today* (Web Article, 12 April 2012).

[6] Walter R Schumm, 'Sarantakos's research on same-sex parenting in Australia and New Zealand: Importance, substance, and corroboration with research from the United States' (2015) 4 *Comprehensive Psychology* 1, 23 n 8.

claims are true and when Cameron challenged Canning and the dissertation assessment committee members on the accuracy of that statement, a correction was inserted into the dissertation copy stating:

> Paul Cameron was not expelled from the American Psychological Association or the American Sociological [sic], nor is there any evidence that he 'willfully misrepresented research'. Toby Canning and his dissertation committee (Malcolm Gray, Bob Jacobs, Cyd Strickland, and Thomas Vail) sincerely regret these inaccuracies. We acknowledge that Dr Cameron's extensive research on homosexuality and homosexual parents (eg, 38 articles listed on PubMed) appears in peer-reviewed journals.[7]

In light of the above, this paper will treat the results of any research that is based on self-selected subjects and self-reporting without any controls or validation as methodologically flawed and inherently unreliable due to a high degree of probability of being subject to bias.

III PROHIBITION OF 'CONVERSION THERAPY'

A *What constitutes 'conversion therapy'?*

The common perception of such therapies is that of coercive surgical, hormonal, pharmacological, behavioural, or psychoanalytic treatments aimed at forcibly altering the sexual desires of patients. This approach has rightly been condemned by both psychiatrists and religious groups, and the overwhelming consensus is that the approach

[7] As cited in Ibid n 8.

is ineffective, harmful, and unethical.[8] Indeed, the prevalence of this approach has been exaggerated, and it is not clear to what extent such practices were employed, and whether they were employed at all in Australia.[9] In addition, the perception that religious 'conversion therapy' involves the exorcism of demons or some medieval ritual is without foundation.[10]

'Conversion therapies' developed and employed by the 'ex-gay movement' and adopted by religious groups were based on popular self-help practices, behavioural and psychoanalytic practices derived from clinical psychotherapy, and spiritual activities. Typical methods included 'Alcoholics Anonymous'-style accountability groups, individual and group counselling, and psychoanalytical activities and counselling aimed at discovering possible reasons or causes of a person's orientation/identification. These counselling and support group activities are usually augmented with spiritual activities (prayer, scripture reading, and fasting) aimed at examining and discovering possible spiritual reasons or causes of a person's orientation/ identification, as well as addressing those reasons or causes on a spiritual level (spiritual healing and deliverance).[11]

From an evangelical Christian perspective, change in sexual orientation is possible, and feelings of desire to identify as a gender other than one's biological sex can be substantially diminished, if not virtually eliminated. In this sense, 'conversion therapy' is a means to facilitate such changes. It is a program of therapy involving three parties:

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8 Timothy W Jones, et al, 'Preventing Harm, Promoting Justice: Responding to LGBT Conversion Therapy in Australia' (Report, Human Rights Law Centre, La Trobe University, 2018) 3.

9 Ibid 72-73.

10 Ibid 13.

11 Ibid.

(1) a person seeking change; (2) a person helping and facilitating change (pastor, counsellor, psychologist, or psychiatrist); and (3) the Holy Spirit. This is not a clinical or mechanical procedure that can be applied to any person, but must be tailored to each individual's specific history, circumstances, and needs, and the success or effectiveness of the therapy will depend on the skill of the provider, the willingness and commitment of the person seeking treatment, and, possibly, supernatural intervention. Moreover, the treatment's success or effectiveness does not necessarily need to result in 100% conversion from homosexuality or feelings of being trapped in the wrong body – especially in the short to medium term. As with any therapy, 'conversion therapy' is a process, and may take many years. Yet, any treatment that leads to a reduction in such desires and feelings may be regarded as effective.

Nevertheless, legislative definitions of what constitutes 'conversion therapy' are broad and vague. The Queensland legislation defines it as 'treatments and practices that attempt to change or suppress a person's sexual orientation or gender identity.'[12]

The Australian Capital Territory ('ACT') legislation defines 'conversion practice' as any 'treatment or other practice the purpose, or purported purpose, of which is to change a person's sexuality or gender identity.'[13]

The Victorian Government's legislation[14] defines it as 'a practice or conduct directed toward a person' – regardless of the person's consent – 'on the basis of the person's sexual orientation or gender identity'

[12] Explanatory Notes, Health Legislation Amendment Bill 2019 (Qld) 4.
[13] *Sexuality and Gender Identity Conversion Practices Act 2020* (ACT) s 7.
[14] *Change or Suppression (Conversion) Practices Prohibition Act 2021* (Vic).

and 'for the purpose of (i) changing or suppressing their sexual orientation or gender identity; or (ii) inducing the person to change or suppress, their sexual orientation or gender identity of the person.' (s 5(1)). The Act's definition of 'practice' (s 5(3)) includes healthcare practices, religious practices, and referrals to others to perform any such practices. The definition of religious practice includes (but is not limited to) 'a prayer based practice, a deliverance practice or an exorcism.' Moreover, the Explanatory Notes state that the intention is 'to capture a broad range of conduct, including, informal practices, such as conversations with a community leader that encourage change or suppression of sexual orientation or gender identity.'[15]

All the current legislation includes a subsection identifying practices that are *not* considered 'conversion therapies': (a) assisting a person undergoing gender transition; (b) assisting a person considering a gender transition; (c) assisting a person to express their gender identity; (d) providing acceptance, support or understanding; or (e) facilitating a person's coping skills, social support or identity exploration and development.[16]

In any case, these definitions cover a wide range of seemingly innocuous practices performed by a variety of people and groups including not only healthcare providers but parents, teachers, counsellors, and priests/pastors, religious schools, and religious institutions.

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[15] Explanatory Notes, Change or Suppression (Conversion) Practices Prohibition Bill 2020 (Vic) 5.

[16] Health Legislation Amendment Bill 2020 (Qld) s 28(2); *Sexuality and Gender Identity Conversion Practices Act 2020* (ACT) s 7(2); *Change or Suppression (Conversion) Practices Prohibition Act 2021* (Vic) s 5(2). Note that the Victorian legislation includes an additional condition that the conduct must be 'supportive of or affirms a person's gender identity or sexual orientation' but does not specify which gender identity or sexual orientation must be supported where an individual is confused or unsure about their identity or orientation.

B *Claims*

Transgender advocate, Dr Michelle Telfer, has argued that psychological practices that attempt to realign a person's gender identity with "their sex assigned at birth" (ie conversion or reparative therapies) 'lack efficacy, are considered unethical and may cause lasting damage to a child or adolescent's social and emotional health and wellbeing.'[17]

A joint report by the Human Rights Law Centre and La Trobe University in 2018 ('HLRC-La Trobe Report') noted the lack of scholarly research on religious 'conversion therapy' in Australia and that international research 'is largely confined to psychological studies on the effectiveness of various treatments.'[18] The researchers interviewed a small group of homosexual and transgender people who had undergone some form of religious conversion activity. Participants claimed that

> [I]t was not just the trauma associated with particular therapies or the cumulative effects of being subject to such therapies over many years that caused lasting harm. It was also the ways in which conversion therapy messaging was embedded in all aspects of the culture and day-to-day practices of their faith communities.[19]

The report relays the participants' accounts of how they were treated by their faith communities, and the alleged psychological harm they experienced as a result. It goes on to criticise the churches' 'welcoming but not affirming' approach as 'insidious' and condemns the traditional

[17] Michelle Telfer et al, *Australian Standards of Care and Treatment Guidelines for Trans and Gender Diverse Children and Adolescents, Version 1.2* (The Royal Children's Hospital, Melbourne, 2020) 5.

[18] Jones et al (n 8) 7.

[19] Ibid 29.

Christian view that homosexual practices are sinful[20] and accuses churches of 'disguising its anti-LGBT ideology and reorientation efforts in the language of spiritual healing, mental health and religious liberty.'[21]

The HLRC-La Trobe Report recommends Australian governments ban 'conversion therapies.' In response, Victorian Premier Daniel Andrews announced that his government would introduce legislation to ban homosexual 'conversion therapy' – 'an evil practice ... bigoted quackery...practices from the dark ages...' Andrews went on to describe it as 'a most personal form of torture, a cruel practice that perpetuates the idea that LGBTI people are in some way broken.'[22] The Victorian Government's aim is to eliminate so far as possible any change or suppression practice, to protect and promote the rights described in the Victorian Charter of Human Rights and Responsibilities, and to ensure each person – regardless of sexual orientation and gender identity – feels welcome and valued.[23]

The Queensland government has already passed legislation (*Health Legislation Amendment Bill 2019* (Qld)) 'prohibiting conversion therapy ... to protect the Queensland LGBTIQ community from the harm caused by conversion therapy' because:

> There is no evidence of any benefits from conversion therapy, nor that sexual orientation or gender identity can be changed through therapeutic or other interventions. To the contrary, clinical and social science research has produced overwhelming

[20] Ibid 17.

[21] Ibid 4.

[22] Daniel Andrews, 'Statement On Conversion Therapy' (Media Release, 3 February 2019).

[23] *Change or Suppression (Conversion) Practices Prohibition Act 2021* (Vic) s 3(1).

> evidence that conversion therapy is psychologically harmful and correlated with higher rates of suicidality, self-harm and other adverse health outcomes. Many professional and expert bodies, including the Australian Psychological Association, Australian Medical Association and World Health Organization, formally oppose the use of conversion therapy and acknowledge that these practices are harmful and unethical.[24]

The Bill's Explanatory Notes defines 'gender identity' as 'a broad term that encompasses a person's internal and individual experience of gender, including the person's personal sense of the body and how they express their gender to themselves and others,'[25] and argues that the ban is justified because 'conversion therapies' amount to a form of 'torture and cruel, inhuman or degrading treatment' as stated in the *Human Rights Act 2019* (Qld) and the *International Covenant on Civil and Political Rights*.[26]

Indeed, the Australian Labor Party's national policy platform declared that the Party accepts the scientific evidence that any attempt to change a person's sexual orientation or gender identity is 'both false and harmful.' The ALP policy included a plan to not just ban all types of so-called 'conversion therapies' but also to prohibit mere 'claims' that sexual orientation or gender identity can change. Moreover, their policy treats 'conversion therapies' as 'serious psychological abuse' and a form of 'domestic violence' if conversion attempts occur within the family – presumably by parents.[27]

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[24] Explanatory Notes, Health Legislation Amendment Bill 2019 (Qld) 4.

[25] Ibid 8.

[26] Ibid 9.

[27] Australian Labor Party, *A Smart, Modern, Fair Australia* (2018) 193. As a result of a campaign by the Australian Christian Lobby, the ALP have now backed away from these policies.

C *What constitutes harm?*

In *On Liberty*, John Stuart Mill famously declared that 'the only purpose for which power can be rightfully exercised over any member of a civil community, against his will, is to prevent harm to others.'[28] According to the *Oxford English Dictionary*, 'harm' primarily refers to the inflicting of physical injury, but psychologists have rightly pointed out that harm also extends to emotional or psychological injury. The common law has always imposed prohibitions and penalties on physical abuse, but legislators have, for some time now, rightly sought to impose similar prohibitions and penalties for psychological and emotional abuse.

The *Oxford English Dictionary* definition reflects the common *outcome-based* definition of harm, ie an action must have objectively negative consequences for it to be harmful. However, Holtug has noted the problem of scope when determining if some action is harmful.[29] For example, if some people find homosexuality offensive, does this mean they are psychologically harmed, and thus legalisation of homosexuality should not be permitted as it results in harm? To view mere disagreements and objections to one's moral convictions as being harmful seems absurd, and Holtug's point is that 'not all negative effects on people are to be considered harms in the relevant sense.'[30]

Therefore, harm has commonly been construed in moral terms ie it must involve an actual wrongdoing. This means that abusing someone

[28] John Stuart Mill, *The Basic Writings of John Stuart Mill* (Random House, 2002) 11.

[29] Nils Holtug, 'The Harm Principle' (2002) 5 *Ethical Theory and Moral Practice* 357, 364.

[30] Ibid 364.

physically or psychologically amounts to actual harm, whereas being offended by homosexual acts, or by the publication of Salman Rushdie's *The Satanic Verses* does not because no one was actually wronged.[31] Of course, this raises the question of which acts (or omissions) constitute moral wrongs? In the absence of a universally agreed moral theory, we will have to be content with a definition comprising the violation of another's legal or human rights.

Although there is no contention regarding physical abuse as wrong and thus an actual harm, psychological abuse is a different story. According to the American Psychiatric Association's *Diagnostic and Statistical Manual of Mental Disorders* ('DSM-5'), psychological abuse involves:

> [V]erbal or symbolic acts with the potential to cause psychological harm (eg, berating or humiliating the person; interrogating the person; restricting the person's ability to come and go freely; obstructing the person's access to assistance; threatening the person; harming or threatening to harm people or things that the person cares about; restricting the person's access to or use of economic resources; isolating the person from family, friends, or social support resources; stalking the person; trying to make the person think that he or she is crazy).[32]

Regarding the psychological abuse of children, DSM-5 states:

> Child psychological abuse is nonaccidental verbal or symbolic acts by a child's parent or caregiver that result, or have reasonable potential to result, in significant psychological harm to the

[31] Ibid 387.

[32] American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders* (American Psychiatric Association Publishing, 5th ed, 2013) 722 ('DSM-5').

> child ... Examples of psychological abuse of a child include berating, disparaging, or humiliating the child; threatening the child ... coercing the child to inflict pain on himself or herself; and disciplining the child excessively (ie, at an extremely high frequency or duration, even if not at a level of physical abuse) through physical or nonphysical means.[33]

Australian jurisdictions have echoed the above definitions in their respective child protection legislation.[34] It is important to note that the legislation of most jurisdictions explicitly or implicitly recognise that mere exposure of a child or young person to physical or psychological abuse directed at another person is also a potential cause of psychological harm.

Yet, in relation to 'conversion therapy' or public discussion and criticism of homosexuality and transgenderism, the standard for what constitutes 'harm' is much lower. To fail to affirm an individual's gender identity or sexual preference is tantamount to psychological abuse. Merely questioning someone's life choices may cause psychological distress, and praying for someone who has unwanted sexual feelings and desires is no different to coercive clinical treatment with drugs or electric shocks.

Unfortunately, as shown below, there has been a growing tendency for policy makers to adopt what Holtug calls a 'top-down' approach where some acts are characterised *a priori* as harmful – despite the absence

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[33] Ibid 719.

[34] See *Children and Young People Act 2008* (ACT) s 342; *Children and Young Persons (Care and Protection) Act 1998* (NSW) s 71(1); *Care and Protection of Children Act 2007* (NT) s 15; *Child Protection Act 1999* (Qld) s 9; *Children and Young People (Safety) Act 2017* (SA) s 17; *Children, Young Persons and Their Families Act 1997* (Tas) s 3(1); *Children, Youth and Families Act 2005* (Vic) s 162(1); *Children and Community Services Act 2004* (WA) s 28.

of any wrongdoing – and this justifies government intervention to prevent or limit such acts.[35]

Various politicians, activists, and media personalities have simply asserted that public debates and discussions around policy issues concerning homosexuality, transgenderism and gender identity will expose those struggling with their sexuality or sexual identity to emotional and psychological distress, and thus, cause them psychological harm.[36] Similarly, employing 'conversion therapy' is viewed as forcing a person to deny their true identity and thus hinder their emotional and psychological development.[37] But are such claims justified?

D *Can sexual orientation and 'gender identity' change?*

Ironically, the critical factor behind the acceptance of homosexuality by the wider community as a valid and normative sexual expression and the recognition of homosexual rights in legislation has been the claim that homosexuals "are born that way" ie same-sex attraction is part of their genetic make-up, and therefore cannot be changed. Indeed, this point played a central role in US Supreme Court case of *Obergefell v Hodges* which sought to strike down all state laws defining marriage as 'the union of one man and one woman.' Kennedy J declared: 'Only in more recent years have psychiatrists and others recognized that sexual orientation is both a normal expression of human sexuality and immutable.'[38]

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[35] Nils Holtug (n 29) 377-378.

[36] Telfer et al (n 17) 5.

[37] Andrews (n 22)

[38] *Obergefell et al v Hodges, Director, Ohio Department of Health et al,* 576 US 8 (Kennedy J) (2015).

However, Kennedy J's assertion has no scientific foundation. According to the American Psychiatric Association's *Handbook*, '[W]e are far from identifying potential genes that may explain not just male homosexuality but also female homosexuality.'[39] Nor is some same-sex sexuality biologically determined and some not: 'The inconvenient reality ... is that social behaviors are always jointly determined' by nature, nurture, and opportunity.[40]

Yet all current legislation banning 'conversion therapy' presupposes that an individual's sexual orientation cannot be changed and that one's chosen or preferred gender identity is not a disorder or disease, and therefore does not need fixing.[41]

In any case, opponents of 'conversion therapy' have created a strawman by asserting that therapists and counsellors claim they can guarantee their clients a change from 100% homosexual to 100% heterosexual. This assertion completely misrepresents 'conversion therapy' in two ways: (1) no therapist or counsellor for any condition can 'guarantee' that every client will achieve success, and no practitioner of 'conversion therapy' would make such a claim; (2) conversion with respect to sexual orientation can refer to any degree of change in sexual attraction, sexual behaviour or sexual self-identification. Therefore, if a client experiences any significant reduction in homosexual attractions or behaviours, or increase in heterosexual attractions, as a result of 'conversion therapy,' then that therapy can be considered

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[39] Deborah L Tolman and Lisa M Diamond (eds), *APA Handbook on Sexuality and Psychology* (American Psychological Association, 2014) vol 1, 579 ('*APA Handbook on Sexuality and Psychology*').

[40] Ibid vol 1, 256-257.

[41] Explanatory Notes, Health Legislation Amendment Bill 2019 (Qld) 4-5; *Sexuality and Gender Identity Conversion Practices Act 2020* (ACT) s 6; and *Change or Suppression (Conversion) Practices Prohibition Act 2021* (Vic) s 3.

effective, and many clients would consider it successful, even if some occasional same-sex attractions remain. As with other conditions (eg depression), an effective therapy will not necessarily eliminate all symptoms entirely all the time.

The principal evidence of 'harm' caused by 'conversion therapy' is the personal testimonies of individuals who claim to have undertaken it, and then subsequently experienced depression or suicidal thoughts. But such anecdotal evidence (even if true) does not constitute scientific proof that 'conversion therapy' is harmful. Correlation is not causation, so in order to prove that 'conversion therapy' is harmful, an objective study would need to demonstrate the following:

1. The number of clients reporting harm exceeds the number reporting benefits;
2. Negative mental and physical health indicators of those who have undergone 'conversion therapy' exceed those who have undergone alternative 'gay-affirming' therapy;
3. Negative mental and physical health indicators of those who have undergone 'conversion therapy' exceed those with same-sex attractions who have had no therapy at all; and
4. Negative mental and physical health indicators of those who have undergone 'conversion therapy' exceed those who have had therapy or counselling for other conditions.

Yet there is simply no scientific evidence to prove each of these points. On the contrary, there are several studies that show the opposite. A study of 125 religious men by Santero et al found that 68% reported a reduction in same-sex attraction and behaviour, ranging from 'some' to 'much' as well as an increase in attraction to women. On the whole, the participants found their therapy helpful. Only one

reported extreme negative effects.[42] About one in seven (14%) claimed that their orientation had changed from exclusively homosexual to exclusively heterosexual. As the authors point out, many men with religious convictions may think that a 14% chance of success is well worth taking.[43] While some homosexuals may not want to change, men with religious convictions are more likely to desire it, and given that any therapy should be tailored to the individual, banning 'conversion therapy' would result in some people being denied the treatment they desire and the help they wish.

Several other studies have also shown that sexual orientation can change. Savin-Williams and Ream have shown that for adolescents, all orientations apart from heterosexuality had a lower likelihood of stability over time. In fact, people who at first reported exclusively heterosexual attractions and behaviour tended to remain very stable in their sexuality, but those who first reported same-sex attractions or behaviour were much more likely to change to heterosexuality rather than bisexuality. In other words, conversion from homosexual behaviour to exclusively heterosexual behaviour was more common than conversion from heterosexuality to any homosexual behaviour.[44]

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[42] Paul L Santero et al, 'Effects of Therapy on Religious Men Who Have Unwanted Same-Sex Attraction' (2018) 20 *The Linacre Quarterly* 1, 11. Note that this study was recently retracted due to 'unresolved statistical differences.' A statistical review of the paper found that the Chi-Square test results were invalid because the test requires groups that are similar but the paper did not identify whether the subjects were treated in the same way, for the same period of time and by similarly qualified therapists. The authors' rightly responded that the only uniformity required was whether the subjects were involved in 'conversion therapy.' Other factors are irrelevant in determining whether subjects experienced benefits or harms. This suggests the retraction was motivated by factors other than "statistical differences."

[43] Ibid 11-12.

[44] Ritch C Savin-Williams and Geoffrey L Ream, 'Prevalence and Stability of Sexual Orientation Components During Adolescence and Young Adulthood' (2007) 36 *Archives of Sexual Behavior* 385, 389.

Moreover, Savin-Williams and Ream provided some indication of how extraordinarily rare exclusive homosexuality among adolescents actually is: 'Same- and both-sex behavior was (sic) collapsed into one category because exclusively same-sex behavior was so rare in all three waves (usually <1%).'[45] The authors also noted that 'if having romantic attraction to both sexes counted as same-sex oriented, then the prevalence rate was nine times higher than if the criterion was exclusive same-sex attraction.'[46]

The *Growing Up Today Study* ('GUTS') longitudinal cohort study of male and female adolescents living throughout the United States, showed:

> Of the 7.5% of men and 8.7% of women who chose a nonheterosexual descriptor at ages 18 to 21, 43% of the men and 46% of the women chose a different category by age 23. Among the same- sex-attracted youth who changed, 57% of the men's changes and 62% of the women's changes involved switching to *Completely heterosexual*.[47]

A study of approximately 1,000 children born in Dunedin, New Zealand in 1972 and 1973 concluded: 'Much same-sex attraction is non-exclusive and unstable. The large size of this unstable group ... is consistent with a large role for the social environment ... Overall these findings argue against any single explanation for homosexual attraction.'[48]

Moreover, Diamond and Rosky noted in their summary of the Dunedin data:

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[45] Ibid 389.

[46] Ibid 392.

[47] Lisa M Diamond and Clifford J Rosky, 'Scrutinizing Immutability: Research on Sexual Orientation and US Legal Advocacy for Sexual Minorities' (2016) 53 *Journal of Sex Research* 363, 372 (emphasis in original).

[48] Nigel Dickson et al, 'Same-sex Attraction in a Birth Cohort: Prevalence and Persistence in Early Adulthood' (2003) 56 *Social Science & Medicine* 1607, 1614.

> [R]ates of change do not appear to decline as respondents get older. Rates of change in attractions among same-sex-attracted men ranged from 26% to 45%, and rates of change in same-sex-attracted women ranged from 55% to 60%. Among the same-sex-attracted men reporting change, between 67% and 100% of the changes were toward heterosexuality, and this also was true for 83% to 91% of the same-sex-attracted women undergoing changes.[49]

Mock's and Eibach's analysis of the National Survey of Midlife Development in the United States found:

> Overall, 55 (2.15%) participants reported a different sexual orientation identity ... Among women, 1.36% with a heterosexual identity changed, 63.3% with a homosexual identity changed, and 64.71% with a bisexual identity changed. Among men, 0.78% with a heterosexual identity changed, 9.52% with a homosexual identity changed, and 47.06% with a bisexual identity changed ... for both men and women heterosexuality was significantly more stable than homosexuality or bisexuality.[50]

Jones and Yarhouse conducted 'a quasi-experimental longitudinal study spanning 6-7 years' tracking a sample of 61 subjects engaged in 'religiously mediated' 'conversion' efforts. They found that 53% of the final sample reported either conversion (23%) or chastity (30%). Only 25% reported failure (confused or identifying as homosexual).[51] Similar results were found by Karten and Wade.[52]

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49 Diamond and Rosky (n 47) 373.

50 Steven E Mock and Richard P Eibach, 'Stability and Change in Sexual Orientation Identity Over a 10-Year Period in Adulthood' (2012) 41 *Archives of Sexual Behavior* 641, 645-646.

51 Stanton L Jones and Mark A Yarhouse, 'A Longitudinal Study of Attempted Religiously Mediated Sexual Orientation Change' (2011) 37 *Journal of Sex and Marital Therapy* 404, 422.

52 Elan Y Karten and Jay C Wade, 'Sexual Orientation Change Efforts in Men: A Client Perspective' (2010) 18 *The Journal of Men's Studies* 84, 84-102.

In addition, Spitzer's comprehensive study of 200 individuals (143 males, 57 females) who had experienced 'reparative therapy' (ie 'conversion' therapy) and had reported some change in orientation from homosexual to heterosexual after at least five years. He found that 11% of males and 37% of females reported complete change from homosexuality to heterosexuality.[53] In addition, '26% of the males and 49% of the females reported being bothered "not at all" by unwanted homosexual feelings,' and 'only 1 male and no female reported being "markedly" or "extremely" bothered by unwanted homosexual feelings.'[54] Moreover, 29% of males and 63% of females had only very low values on measures of homosexual orientation after experiencing 'conversion therapy', and 66% of males and 44% of females 'satisfied the criteria for Good Heterosexual Functioning.' Most importantly, Spitzer found that depression was not a side effect of the experienced 'therapy' and participants 'often reported that they were "markedly" or "extremely" depressed [before 'conversion therapy'] (males 43%, females 47%), but rarely that depressed [after 'conversion therapy'] (males 1%, females 4%).'[55] Therefore, Spitzer concluded:

> [S]ome gay men and lesbians, following reparative therapy, report that they have made major changes from a predominantly homosexual orientation to a predominantly heterosexual orientation. The changes following reparative therapy were not limited to sexual behavior and sexual orientation self-identity. The changes encompassed sexual attraction, arousal, fantasy, yearning, and being bothered by homosexual feelings. The changes encompassed the core aspects of sexual orientation. Even participants who only made a limited change nevertheless

[53] Spitzer (n 3) 403.
[54] Ibid.
[55] Ibid 410-412.

regarded the therapy as extremely beneficial.[56]

One of the largest studies of 'conversion' therapy results involved surveying 882 (689 men, 193 women) "dissatisfied homosexually oriented people."[57] The researchers found that over 67% of the participants indicated they were exclusively homosexual or almost entirely homosexual at one time in their lives, but only 12.8% indicated that they now considered themselves homosexual. Before treatment, only 2.2% considered themselves as exclusively or almost entirely heterosexual, whereas after treatment more than 34% did so. Of the 318 participants who viewed themselves as exclusively homosexual, 56 (17.6%) reported that they now consider themselves as exclusively heterosexual; 53 (16.7%) now view themselves as almost entirely heterosexual; and 35 (11.1%) now view themselves as more heterosexual than homosexual.[58] Moreover, only 7.1% of participants "reported that they were doing worse on three or more [out of 17] of the psychological, interpersonal, and spiritual well-being items after treatment."[59]

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[56] Ibid 413. Spitzer acknowledged that self-reporting opens a theoretical possibility that the reports could be biased or inaccurate. However, he concluded that 'the participants' self-reports in this study are by-and-large credible and that probably few, if any, elaborated self-deceptive narratives or lied.': at 412-413. Hershberger agreed with this conclusion (Scott L Hershberger, 'Guttman Scalability Confirms the Effectiveness of Reparative Therapy' in Jack Drescher and Kenneth J Zucker (eds) *Ex-Gay Research: Analyzing the Spitzer Study and Its Relation to Science, Religion, Politics, and Culture* (Harrington Park Press, 2006) 137-140): 'Because participants were self-selecting, generalizations regarding the effectiveness of "conversion" therapy for any particular individual are not possible. Nevertheless, Spitzer's study demonstrates that change is *possible* for some.'

[57] Joseph Nicolosi et al, 'Retrospective Self-Reports of Changes in Homosexual Orientation: A Consumer Survey of Conversion Therapy Clients' (2000) 86 *Psychological Reports* 1071, 1076.

[58] Ibid 1078.

[59] Ibid 1080-1081.

Contra the accepted view that sexual orientation is immutable, the aforementioned studies show there is ample evidence that substantial change – if not complete change – is indeed possible, particularly if one desires change. Moreover, homosexual activists appear duplicitous in encouraging people to change their orientation from heterosexual to homosexual, yet balk at the possibility of change in the other direction.

In any case, if sexual orientation was immutable, where does that leave transgenderism? As already noted, there is no scientific evidence that sexual orientation is genetically determined and all attempts to find a 'gay' gene have failed. Yet a person's sex or 'gender' is genetically encoded into every cell of their body! Those who view sexual orientation as immutable but accept the legitimacy of transgenderism appear to suffer from a clear case of cognitive dissonance. Moreover, the entire proposition is a loaded question. Using the term 'gender identity' instead of 'sex' presupposes the possibility of non-binary and fluid options. However, this is ultimately a denial of reality, as Morabito explains: 'This puts us on the path to banning recognition of the reality that every single human being exists through the union of one male and one female. There are no exceptions to this reality. You exist as the union of the two opposites through whom you were created.'[60]

APA's DSM-5 indicates that 70-98% of gender dysphoric boys and 50-88% of gender dysphoric girls eventually accept their chromosomal sex.[61] The *APA Handbook* states that 'it is critically important for clinicians not to assume that any experience of same-sex desire or behavior is a sign of latent homosexuality and instead to allow

[60] Stella Morabito, 'A De-Sexed Society is a De-Humanized Society' (25 May 2016) *Public Discourse*.

[61] DSM-5 (n 32) 455.

individuals to determine for themselves the role of same-sex sexuality in their lives and identity.'[62] The origin of transgender identity is 'most likely the result of a complex interaction between biological and environmental factors ... Research on the influence of family of origin dynamics has found some support for separation anxiety among gender-nonconforming boys and psychopathology among mothers.'[63]

Contra Telfer's demand for affirmative responses, the *APA Handbook* states:

> Premature labeling of gender identity should be avoided. Early social transition (ie, change of gender role, such as registering a birth-assigned boy in school as a girl) should be approached with caution to avoid foreclosing this stage of (trans)gender identity development ... the stress associated with possible reversal of this decision has been shown to be substantial...[64]

Moreover, the *APA Handbook* warns that the full acceptance approach 'runs the risk of neglecting individual problems the child might be experiencing and may involve an early gender role transition that might be challenging to reverse if cross-gender feelings do not persist.'[65]

E *Counter-claims*

It must be noted that the HLRC-La Trobe Report has fundamental methodological flaws. Participants were recruited by solicitation through social media, LGBT media reportage of the project, and through various LGBT, queer and ex-gay survivor networks, and the

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[62] *APA Handbook on Sexuality and Psychology* 257.
[63] Ibid vol 1, 743.
[64] Ibid vol 1, 744.
[65] Ibid vol 1, 750.

selections were claimed to be broadly representative of religious and LGBT demographics in Australia.[66] Less than fifty people responded to the researchers' invitation, and *only 15* of these people were interviewed![67] Apart from the tiny sample size, studies that rely on self-selecting participants who report their own unverified experiences are nearly always subject to self-justification and self-presentation bias, or, as some researchers call it, 'social desirability bias': a desire to support a particular social agenda by painting their ideological opponents in the worst possible light. Suffice to say the 'findings' in this study are practically worthless.

A 2009 survey report by the American Psychological Association stated: 'We found that there was some evidence to indicate that individuals experienced harm from [conversion therapy].'[68] However, much of the research fails to distinguish between individual and group responses. A therapy that caused 'harm' to 10% of subjects may be considered unacceptable by a group standard, but beneficial for the other 90% of subjects. Similarly, a therapy that helped only 10% of subjects would be considered ineffective by a group standard but possibly life-changing for those individuals that were helped.

Nevertheless, the Australian Psychological Society's position statement asserted that '[t]here is no clinical evidence demonstrating that approaches that claim to change a person's sexual orientation are

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[66] Jones et al (n 8) 8. Participants were aged 18 to 59 years, from six states and one territory, with experiences of conversion therapy dating from the 1980s to the present. Nine participants identified as homosexual male, two as lesbian female, two as transgender, one as bisexual female and one as non-binary. Thirteen participants were from Christian backgrounds, one from a Jewish background and one from a Buddhist background.

[67] Ibid.

[68] American Psychological Association, *Report of the Task Force on Appropriate Therapeutic Responses to Sexual Orientation* (2009) 3.

effective' and 'the "failure" of such approaches can further contribute to negative mental health outcomes.'[69] But, as is often the case with ideologically charged issues, researchers have chosen to ignore the positive results of many conversion therapy studies over several decades. For example, the study on the effect of conversion therapy on religious men by Santero et al concluded that it is 'neither ineffective, nor harmful' and noted that social pressures did not predominate as the reason for seeking treatment.[70] Indeed, they conclude that 'The concept of the immutability of sexual attraction must be rejected.'[71]

The notion that universal acceptance of homosexuality would eliminate or greatly reduce psychological harm is highly dubious. A large study from the Netherlands – known for its broad and longstanding acceptance and celebration of homosexuality – found homosexual youths are four times as likely to suffer major depression, three times as likely to suffer anxiety disorder, five times as likely to smoke, six times more likely to suffer multiple disorders, six times more likely to have attempted suicide, and four times as likely to have succeeded at suicide.[72] Thus, it appears far more likely that homosexuality itself is a major risk factor for mental health disorders rather than being caused or exacerbated by social hostility and stigma.

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69 Australian Psychological Society Task Force, *APS Position Statement on the Use of Psychological Practices that attempt to change Sexual Orientation* (American Psychological Association, August 2015).

70 Santero et al (n 42) 14-15.

71 Ibid 12.

72 Theo G M Sandfort et al, 'Same-Sex Sexual Behaviour and Psychiatric Disorders: Findings from the Netherlands Mental Health Survey and Incidence' (2001) 58 *Archives of General Psychiatry* 85-91. See also R Garofalo et al, 'Sexual Orientation and Risk of Suicide Attempts Among a Representative Sample of Youth' (1999) 153 *Archives of Pediatric and Adolescent Medicine* 487, 487-493.

In addition, the general positive effect that religion has on an individual's mental and physical health must also be considered. Seybold and Hill note that it has been widely held that religion has a predominantly negative influence on health, but recent research indicates the impact of religion and spirituality on physical and mental health 'is largely beneficial.'[73] Indeed, Townsend et al examined the effects of religion on patients by reviewing clinical trials that assessed the relationship between religion and a measurable heath outcome. They found that religious activities appeared to benefit blood pressure, immune function, depression, and mortality.[74]

IV LEGAL IMPLICATIONS

A *Health service providers*

Queensland has already enacted legislation prohibiting health service providers from performing 'conversion therapy' on a homosexual or transgender person.[75] The definition of a health service provider is broad, comprising any individual or entity that provides a service that is, or purports to be, for maintaining or improving a person's health or wellbeing. It includes unregistered health practitioners such as counsellors, naturopaths and social workers.[76] The offence will apply regardless of whether the service is paid for or provided for free, and regardless of the location where the service is provided. The Bill's

[73] Kevin S Seybold and Peter C Hill, 'The Role of Religion and Spirituality in Mental and Physical Health' (2001) 10 *Current Directions in Psychological Science* 21, 21.

[74] Mark Townsend et al, 'Systematic review of clinical trials examining the effects of religion on health' (2002) 95 *Southern Medical Journal* 1429, 1429.

[75] *Public Health Act 2005* (Qld) ss 213E-213I.

[76] *Health Practitioner Regulation National Law Act 2009* (Qld) s 5.

Explanatory Notes state:

> It would be a violation of the trust that the community places in health service providers to allow these practices to be carried out in the health care system. Prohibiting conversion therapy by health service providers also sends the message that these practices are opposed by the Queensland Government and that being a LGBTIQ person is not a disorder that requires treatment.[77]

The *Explanatory Notes* continue:

> A term of imprisonment is necessary to send the message that conversion therapy is not condoned by the Queensland Government and to ensure the offence is a strong deterrent... This may result in registration consequences for the practitioner, which is a further disincentive for health practitioners to engage in conversion therapy...A higher penalty acknowledges that vulnerable people, including children, people without legal capacity or people with an impairment that may limit their understanding of the treatment, are especially susceptible to these unproven and unethical practices.[78]

The ACT has enacted similar legislation but the prohibition is not limited to health service providers.[79] It defines 'conversion practice' as any 'treatment or other practice the purpose, or purported purpose, of which is to change a person's sexuality or gender identity.'[80] Indeed, anyone who performs a sexuality or gender identity conversion practice on a child or person with an impairment faces criminal sanctions regardless of whether consent has been given.[81]

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77 Explanatory Notes, Health Legislation Amendment Bill 2019 (Qld) 9.

78 Ibid 14.

79 *Sexuality and Gender Identity Conversion Practices Act 2020* (ACT).

80 Ibid s 7.

81 Ibid s 8.

The Victorian legislation imposes substantial criminal penalties (including lengthy prison terms) on *anyone* engaging in a 'change or suppression practice,' regardless of whether consent was given. Therefore, the prohibition covers all registered and unregistered health service providers. Moreover, the legislation applies to health service providers outside of Victoria if there is a substantial link with Victoria (eg the individual receiving the 'conversion therapy' is a resident of Victoria). In addition, there are fines for anyone advertising a 'change or suppression practice.'

Note that the HLRC-La Trobe Report also contained the following non-legislative recommendations that may have consequential legal implications if implemented:

1. Strengthening health professionals' Codes of Conduct to ensure conversion therapy is specifically prohibited and enforcement action is available;

2. Forcing professional bodies representing health practitioners, counselling psychologists, social workers and Christian counsellors to inform public of the risks, make members aware of the ethical issues, deliver training on the potential harms of conversion therapy, monitor impacts of conversion therapy, and to collaborate with other professions to bring an end to conversion therapy; and

3. Provision of training regarding the potential risks and harms of conversion therapy as part of mental health and other health professionals' curriculum and continuing professional development.

These recommendations and legislative provisions not only discourage but effectively prohibit practitioners from exploring any underlying conditions and causes of patients' distress. Practitioners are effectively forced to put their professional stamp of approval on a predetermined

diagnosis that is more than likely wrong, and will only exacerbate their patients' suffering.

Yet, there is the potential for a defendant practitioner to argue that their treatment does not constitute 'conversion therapy' based on the legislative exclusions noted above (section IIIA). If a person was born male, lived as a female, but now expressed a desire to transition back to being male, then a practitioner – according to one interpretation of the legislation – may 'assist' that person to transition back to their birth identity, or to express their birth identity. In addition, the practitioner may provide acceptance, support, and understanding, or facilitate the person's coping skills, and their identity exploration and development.

If a person living as a homosexual felt uneasy or uncomfortable about their sexual identity and expression, and wanted to explore the possibility of a heterosexual identity, then a practitioner – again, according to one interpretation of the legislation – may provide acceptance, support, and understanding for this person's feelings and desires, and facilitate the 'exploration and development' of their sexual identity, and connect the person to a community of people who will provide social support during their exploration.

B *Parental rights*

What about parents who want to affirm the biological sex of a child who is confused about their identity, or just enjoys doing activities typically done by the opposite sex? Existing and recommended legislation puts parents in real danger of serious legal sanctions.

ACT legislators also amended the *Human Rights Commission Act 2005* (ACT) to allow complaints from anyone to the Human Rights

Commission regarding 'conversion practices'.[82] In addition, the Act will potentially criminalise parents, guardians, teachers and pastors who provide moral, ethical and religious care and formation for children. Furthermore, it imposes criminal sanctions on anyone who performs a sexuality or gender identity conversion practice on a 'protected person' – a child or a person with an impairment regardless of consent.[83]

Thus, if a 5-year old biological girl tells her parents that she wants to be a boy, criminal proceedings could be brought against her parents if they continue to treat her as a girl or if they counsel her against taking any action to change her appearance.

Like the ACT legislation, the Victorian prohibition applies to all including parents. Victoria's Education Department already allows school principals to facilitate a student's transition while at school without parental knowledge or consent. If a parent finds out and attempts to stop the school from interfering with, or manipulating their child's state of mind, this would be considered a 'suppression practice', and expose the parent to possible criminal sanctions and/ or child protection interventions. Indeed, the Australian Labor Party's national policy platform included provisions to categorise parents and other family members who do not affirm a child's sexual orientation or gender identity as perpetrators of domestic violence![84]

In addition, the HLRC-La Trobe Report made the following regulatory recommendations that may have consequential legal implications:[85]

1. Classifying and rating 'ex-gay' and 'ex-trans' publications

[82] *Human Rights Commission Act 2005* (ACT) s 53ZA.
[83] *Sexuality and Gender Identity Conversion Practices Act 2020* (ACT) s 8.
[84] Australian Labor Party (n 27) 193.
[85] Jones et al (n 8) 67-71.

(television, books, online content) to reflect their negative impact on the psychological health of individuals; and

2. State Government agencies to explicitly identify conversion practices as unlawful and falling within the definition of reportable conduct prompting responses by child protection services, justice agencies and family violence support services.

So if 'ex-gay' and 'ex-trans' publications are given a legally enforceable classification similar to R18+, parents providing such material to their children may not only be participating in a 'conversion' practice, but breaching the Classification Regulations as well. Moreover, such parents could be reported by teachers to child protection services, and be subject to Government intervention.

C *Churches and religious institutions*

The ACT legislation includes a clarification note stating that 'a mere expression of a religious tenet or belief' would not constitute a sexual preference or gender identity conversion therapy.[86] However, the Victorian legislation contains no such clarification. Therefore, the blanket prohibition in Victoria exposes all religious institutions and their leaders and members to possible criminal sanctions for merely proclaiming or expressing a view that does not affirm homosexual relationships or the possibility of changing one's gender.

In any case, in both jurisdictions, religious leaders and religious institutions who instruct, proclaim, or appeal to those experiencing feelings of having a divergent sexual identity, or having homosexual desires, not to act on those feelings and desires, may be liable for

[86] *Sexuality and Gender Identity Conversion Practices Act 2020* (ACT) s 7(2).

engaging in 'conversion therapy.' Thus, a Pastor, Priest, or Christian counsellor who counsels a member of their congregation regarding unwanted same-sex attraction is at risk of exposure to a conversion therapy complaint to the ACT Human Rights Commission[87] or the Victorian Equal Opportunity Commission[88] regardless of whether the person being counselled sought counselling of their own volition. The same applies to a teacher in a Christian school.

Note that, in the ACT, contested complaints will be decided by the ACT Administrative Tribunal ('ACAT') and if financial compensation is deemed appropriate, there is no limit to the amount that may be ordered.[89]

Once again, the HLRC-La Trobe Report also makes the following non-legislative recommendations that may have consequential legal implications:[90]

1. Insertion of specific clauses into funding agreements with schools and providers of school chaplaincy programs to prohibit conversion practices by school chaplains and/or any referrals or support to gain access to conversion practices;

2. Mandatory training for school chaplains that addresses the potential harm caused by conversion therapy to same-sex attracted and gender questioning young people;

3. State Government agencies to explicitly identify conversion practices as unlawful and falling within the definition of reportable conduct prompting responses by child protection services, justice agencies and family violence support services;

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87 *Human Rights Commission Act 2005* (ACT) s 42(1)(ec).

88 *Change or Suppression (Conversion) Practices Prohibition Act 2021* (Vic) s 24.

89 *Human Rights Commission Act 2005* (ACT) s 53ZF.

90 Jones et al (n 8) 67-71.

4. Rolling out of education and training within religious organisations and faith communities to ensure religious ministers are fully aware of their responsibilities to report unlawful conversion activities;

5. Classifying and rating 'ex-gay' and 'ex-trans' publications (television, books, online content) to reflect their negative impact on the psychological health of individuals.

These recommendations not only prohibit religious leaders and religious institutions from doing anything but affirming an individual's gender identity or sexual preference, they also regulate the way religious leaders and institutions must behave, and restrict the kind of information that may be provided to, or accessed by, people within their sphere of influence. Moreover, religious leaders will be legally obligated to report to authorities anyone who violates or resists the mandate to affirm an individual's gender identity or sexual preference resulting in government intervention that may result in the destruction of that person's reputation and/or career, the breaking up of their family, or even criminal prosecution.

These recommendations would make it extremely difficult for religious institutions to articulate orthodox teaching regarding sexual identity and preference, or to offer the most basic and unobtrusive pastoral care including prayer and counselling. Indeed, they would make it extremely difficult to preach the Christian gospel!

V CONCLUSIONS

Legislative restrictions and bans on 'conversion therapy' are based on faulty assumptions and assertions that are not supported by scientific evidence. As shown above, studies that purported to indicate that 'gender' is *not* an innate, fixed property of human beings, and

that a person might be 'a man trapped in a woman's body' or 'a woman trapped in a man's body' have been shown to be seriously, methodologically flawed, or unreplicable. Yet such studies are still accepted and propagated as settled scientific fact.

Moreover, it appears that 'conversion therapy' is perfectly acceptable when applied in one direction but not in the other. There is no problem with counselling an individual to adopt a gender identify different to their biological sex, or to encourage an individual to act on homosexual desires, even if that person is reluctant to do so. In other words, 'conversion therapy' is fine if practiced by homosexual or transgender activists, but reprehensible and harmful if practiced by religious conservatives.

In addition, there is an ideological and politically correct view that traditional Christian moral teaching is inherently harmful because it critiques and rejects non-traditional intimate relationships and non-binary gender identity, and asserts that people can and do change their sexual orientation. But this overlooks the causes of real harm, which are often suppressed or dismissed out of hand because they do not fit the prevailing social narrative.

But what about those who freely and voluntarily seek counselling or help to eliminate their gender confusion or homosexual desire? Nicholas Cummings, a former President of the American Psychological Association, contends that counselling should be available for people experiencing unwanted same-sex attraction on the principle of patient choice.[91]

[91] Nicholas A Cummings, 'Sexual reorientation therapy not unethical', *USA Today*, (Web Article, 30 July 2013).

Nevertheless, the sexual revolution has changed gears. Rather than just campaigning for sexual freedom, ideologues are now obsessed with coercively eliminating any and all disapproval of another's choices and actions. They employ state power to enforce a worldview that contradicts reality itself and the lived experience of the community. Indeed, the transgender agenda has become more aggressive and pervasive in redefining human relationships to marginalise and de-normalise traditional marriage and family. This has resulted in legislators and government functionaries becoming more intolerant of those who object to, or push back against, the homosexual and transgender social agenda. Policy makers have become increasingly insulated from voters' concerns, and are bullied into enacting the ideologues' agenda despite the intractable realities of human beings and human society.[92] As Kersten put it, the 'transgender crusade ... is inherently authoritarian ... because it has to be. Nature and common sense oppose it ... [therefore c]ritics who persist in drawing attention to reality must be discredited or silenced.'[93]

[92] Paul Adams, 'Gender Ideology and the Truth of Marriage: The Challenge for Christian Social Workers' (2017) 44 *Social Work & Christianity* 143, 155–156.

[93] Katherine Kersten, 'Transgender Conformity' *First Things* (Web Article, December 2016)