

8<sup>th</sup> September 2021

Committee Secretariat  
Justice Committee  
Parliament Buildings  
WELLINGTON

Dear Select Committee Members

### **Submission on Conversion Practices Prohibition Legislation Bill**

I strongly oppose enactment of the Conversion Practices Prohibition Legislation Bill. This Bill will undermine parental authority, over-ride individuals' right to choose counselling and support that suits them, and seriously threaten freedom of expression.

#### *Undermining Parents*

1. The stated purpose of the Bill is to “promote respectful and open discussions regarding sexuality and gender” (Section 3(b)). However it is difficult to see how the criminal and civil sanctions established in the Bill (both jail terms and damages) will contribute towards this aim. In particular the ability of parents to have such discussions with their children will now be overshadowed by the threat of legal action if such discussions are interpreted as a “conversion practice”. The broad definition of conversion practice in the Bill, plus the lack of specific protections for parents, means this a real possibility. Expecting open discussion in the shadow of such a threat is unrealistic.
2. The Bill creates an asymmetry in power with respect to the guidance and direction of children on matters of sexual orientation or gender identity and expression. Under the Bill, individuals or organisations which seek to promote an LGBTQ agenda will be free to assist or facilitate children in exploring, expressing, and even changing their gender identity. Such actions are specifically excluded from the definition of conversion practice (Section 5, Clause 2(b)(c)(e)). This might happen in a school or on-line context. However parents who wish to encourage and guide their own children from a traditional-values viewpoint will be at threat of legal action. This asymmetry in power seriously undermines parental agency and authority. It effectively inserts a State-ordained ideology into family life and allows activist organisations to exert power and influence over children whilst parents are sidelined.
3. The Bill makes it an offence to perform conversion practices on a person under 18 years of age or a person who “lacks, wholly or partly, the capacity to understand the nature, and to foresee the consequences, of decisions in respect of matters relating to their health or welfare.” (Section 8, Clause 1(b)). Hence at face value it appears that the Bill considers children under 18 to lack such decision-making capacity. Yet in spite of this, it specifically

permits active assistance to such children to explore, express and change their gender identity (Section 5, Clause 2(b)(c)(e)). This is inconsistent. If children under 18 lack decision-making capacity then actively assisting them along the pathway to gender transition should also be proscribed.

4. Whilst those who wish to actively assist children to change their gender identity are facilitated by the exclusions noted in Section 5, parents who may wish to resist this are provided no such exclusions. They are restricted to “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.” (Section 5, Clause 2(f)). Unlike the exclusions that allow active assistance to change, this exclusion allows mere passive expression of a belief. Parents who are not religious do not even have this protection. Again this reflects the asymmetry of the Bill.
5. It has been argued that Section 12 provides protection for parents. This stipulates there will be no prosecutions without the consent of the Attorney-General. However this is not a specific protection and there is no guarantee that it will safeguard parents from prosecution. The current Minister of Justice is already on record as saying it is “not OK” for parents to refuse puberty blockers for a 12 year old child (NewstalkZB interview 30/07/21). The Bill also offers no guidance on what criteria the Attorney-General will use to make their decision. Hence parents will remain in the dark as to whether their actions may trigger a prosecution.
6. Even if few prosecutions are undertaken, the mere threat of legal action will have a chilling effect on parents exercising their legitimate right to guide, counsel and exercise legal authority over their children. Parents should continue to have the right to refuse consent for any gender-identity related medical treatment for their child which interrupts their natural physiological development. Such treatment carries the risk of harmful and irreversible long-term impacts. However under the proposed Bill, children will effectively be given the right to choose such treatment without parental interference. These are children who can’t vote, drink, get married, drive a car, or in many cases even be legally left alone at home.
7. In sidelining parental authority, the Bill implicitly assumes that children have the capacity to make informed, rational and far-sighted decisions on these matters. This assumption is ill-considered and irresponsible. In December 2020 the UK High Court ruled (Bell vs Tavistock, 01/12/20) that children under the age of 16 were highly unlikely to be capable of informed consent to such treatment. Even for children aged 16-18 the judges raised serious doubt about consent and recommended Court oversight. After considering expert evidence the judges concluded that the practice of prescribing puberty blockers for children was experimental, involved long term risks, and children were not capable of grasping these risks regardless of how much information they were given or how much discussion they were engaged in.

*Individuals prohibited from seeking counselling of their choice*

8. The Bill assumes that any practice which seeks to change or suppress an individual's sexual orientation, gender identity or expression is by definition harmful. It makes no distinction between coercive and manipulative practices (which are undoubtedly harmful in any context) and compassionate and respectful counselling entered into voluntarily. The latter may indeed be aimed at helping individuals overcome or manage unwanted same-sex attraction. If this is what individuals are seeking they should not by law be prohibited from accessing it. By criminalising counsellors or psychologists who offer such help the Bill will effectively remove this option from individuals and subvert their right to access the support they want.
9. The Bill is based on the assumption that all "conversion therapy" is harmful and ineffective. This description is often repeated by those promoting the Bill. However the evidence on this is not as clear-cut as those advocates would suggest. In 2021 Dr Con Katafaris published a *Literature Review of Reports of SOCE Practices: Are Therapies to Assist with Unwanted SSA "Discredited and Dangerous"*. The review covers a wide range of reports on therapies described as sexual orientation change efforts (SOCE) including some of those referenced in the Ministry of Justice Regulatory Impact Statement prepared for this Bill. It concludes SOCE therapies undertaken by qualified and licensed practitioners are often beneficial and have a "success rate comparable to success rates of other psychotherapies".
10. The Bill promotes the notion that coercive or manipulative "conversion practices" are a widespread problem causing significant harm in our society. These are generally assumed to come from faith-based sources. However in nearly 40 years as a Christian in New Zealand, including over a decade in church leadership, I have never come across such practices. The Ministry of Justice in its own Regulatory Impact Statement on the proposed legislation states, "It is assumed that the use of conversion practices is not widespread in New Zealand as anecdotal information is that the settings in which they occur are limited. The number of complaints per year is therefore not expected to be significant." (RIS page 5). It would seem the Bill is a solution looking for a problem.

*Freedom of expression under threat*

11. The Bill is premised on the notion "that no sexual orientation or gender identity is broken and in need of fixing". This statement is made in the Bill's explanatory note and repeated across supporting documents. It is not, however, a statement based in scientific or biological fact. Rather it is a political statement reflecting a particular ideology around human sexuality and gender. Many New Zealanders will have a different view of human sexuality and gender. Whilst their views may not be able to be caricatured in the way this statement suggests, they may nevertheless not align with the ideology it represents. However this Bill will effectively establish this ideology at the State-ordained view.

12. In establishing a State-ordained ideology of human sexuality and gender this Bill raises serious questions around freedom of expression. Will New Zealanders be able to express a different view of human sexuality and gender in the public square? Will New Zealanders working in the public sector be able to express a different view of human sexuality and gender in their employment contexts? As a former employee of a public sector organisation which was already promoting rainbow ideology it is easy to see how the legal weight provided by this Bill will make it even harder for alternative views to be expressed in such workplaces.
13. The Bill ostensibly provides a protection for freedom of religious expression (Section 5, Clause 2(f)) however this relates to expressions “directed to an individual” and does not cover general public discourse. It also provides no protection for those who may wish to express a view which diverges from the State-ordained view, but whose view does not arise from a religious belief or principle.
14. The religious expression protection noted above also applies only if the expression is not “intended to change or suppress the individual’s sexual orientation, gender identity, or gender expression”. However the issue of intention is open to interpretation and dispute. This is likely to lead to individuals self-censoring the free expression of their views, either in private or public, to avoid accusations, complaints, and possible severe sanction. In the face of jail terms or damages will individuals risk expressing views where their intentions may be misinterpreted or even deliberately misconstrued?
15. The Section 5 religious freedom of expression protection in this Bill must also be understood in the light of the Government’s recently published proposals on “hate speech”. These include adding to the groups protected in law from “hateful speech” to include those based on sexuality and gender, including trans and gender diverse people. Hence whilst this Bill may ostensibly offer protection for freedom of religious expression on matters pertaining to human sexuality and gender, there is every chance such limited freedom as it offers will soon be removed in other legislative changes already being planned by the Government.

## Recommendations

The Conversion Practices Prohibition Legislative Bill is unnecessary. The Ministry of Justice has stated that the practices it seeks to prohibit are not widespread in New Zealand and few complaints are expected. However the Bill will undermine parental authority, restrict individuals' freedom to seek counselling of their choice, and put freedom of expression at risk. In view of this it is recommended that the Bill be progressed no further.

If, however, the Bill is to proceed it should at the very least include the following amendments.

- ❖ The definition of a prohibited conversion practice should make clear that it only includes therapies or practices which are coercive, manipulative, physically harmful, demonstrably psychologically harmful, or not entered into voluntarily.
- ❖ Therapies directed to sexual orientation change, undertaken respectfully by qualified counsellors and health practitioners, and which are entered into voluntarily by adults, should be specifically excluded from the definition of conversion practices.
- ❖ Parents or legal guardians of children should be specifically excluded from any prosecution under the Bill. There should also be a clear statement that they have the right to refuse gender transition medical treatment for their children unless such treatment is ordered by a Court.
- ❖ The exclusions from the definition of conversion practice outlined in Section 5 Clauses (b) (c) and (e) should be deleted. This would help remove the power asymmetry established in the Bill between the rights of parents and the influence of activists.
- ❖ The definition of a prohibited conversion practice should be expanded to include the dissemination among children of information aimed at promoting gender-fluidity ideology.
- ❖ The protection for expression of religious beliefs or principles in Section 5 Clause 2 (f) should be extended to include the expression of any views which do not accord with the State-ordained view of human sexuality and gender established in the Bill.

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8<sup>th</sup> September 2021