

Mental Health and Wellbeing Commission submission towards the Conversion Practices Prohibition Legislation Bill

Submitted to the Justice Committee 08 September 2021.

Tēna koe me ngā mihi,

The Mental Health and Wellbeing Commission (the Commission) appreciates the opportunity to submit on the Conversion Practices Prohibition Legislation Bill (the Bill).

We welcome the introduction of a Bill to prohibit conversion practices, and support its general intent. We would like to see some areas clarified or strengthened, and our overall advice is to listen carefully to the voices of rainbow communities. Throughout this submission, we use the term ‘rainbow communities’ as inclusive of trans, people with variations of sex characteristics (sometimes referred to as intersex) and non-binary.

The Bill aims to ban conversion practices, encompassing a broad range of practices that seek to change or suppress a person’s sexual orientation, gender identity, or gender expression. We recognise and welcome this step towards human rights-based mental health legislation.

We hear from rainbow communities that discrimination and prejudice against who they are causes serious damage in every aspect of their lives, and that conversion practices contribute to this damage.

We advocate to provide rainbow communities with support affirming who they are, and see conversion practices as harmful. Rainbow communities and particularly people with lived experience of conversion therapy have expressed the need for an inclusive process where their input is actively sought and enabled.

Our submission is structured around the three key aims of the Bill:

- Part one: Define conversion practices and exemptions
- Part two: Create new criminal offences to deter conversion practices
- Part three: Provide a civil redress scheme for conversion practices using the Human Rights Commission’s existing functions.

Thank you for considering our submission.

Part one: Define conversion practices and exemptions

1. The Bill usefully defines conversion practices and outlines where exemptions may lie. However, we agree with rainbow communities that some areas require further consideration.

Exemption for health practitioners

2. Section 5(2)(a) provides an exemption for health practitioners providing health services within their scope of practice. We note that research undertaken by Counting Ourselves¹ showed that 1 in 6 transgender or non-binary people had experienced conversion therapy by a professional, such as psychiatrist, psychologist or counsellor, suggesting a simple exemption for health practitioners might still expose some to harm.
3. Further, we note that some professionals providing health services, such as counsellors, are not covered by the Health Practitioners Competence Assurance Act 2003, and are thus currently outside the scope of the Bill.
4. We recommend the Select Committee consider –
 - a) if the exemption for health practitioners working in health services is appropriate, given concerns within rainbow communities, and
 - b) if practitioners working in health services but not regulated under the Health Practitioners Competence Assurance Act should be subject to the same protections as those outlined in the Bill.

No exemption for religious practice or parenting

5. We recognise that Section 5(2)(f) provides religious groups with an opportunity to practice religion in a way that is healthy for all and does not unnecessarily criminalise religious groups. We support the strong call from rainbow communities that there should be no exemptions for religious people or people of faith to engage in conversion practices.
6. We acknowledge that the Bill does not have exemptions for parents/caregivers to engage in conversion practices and there is sufficient space to allow parents to have conversations with and advise their children. We support rainbow communities in noting that the Bill has struck the right balance between allowing parents to advise their children and banning conversion practices.

¹[Counting Ourselves Report Dec 2019](#)

Part two: Create new criminal offences to deter conversion practices

Definition of serious harm

7. The Bill defines “serious harm” as any physical, psychological or emotional harm that seriously and detrimentally affects the health, safety or welfare of the individual. This definition of serious harm is very broad and consequently open to interpretation, confusion, and potential misuse.
8. A definition with more clarity is required that incorporates physical and mental health, individual wellbeing, and whānau wellbeing. This is necessary to:
 - a) allow support and redress to be accessible for victims and survivors,
 - b) acknowledge the impact of stigma and conversion practices on family and whānau, and
 - c) provide clear guidance to all about what constitutes as unlawful practice.

Threshold for prosecution on the basis of age

9. We note the Bill creates an age-based distinction for prosecution where victims are over 18 years old and serious harm has occurred.
10. Section 8 does not require victims and survivors under 18 to suffer any harm for prosecution, while anyone aged 18 or above who goes through conversion practices will only be able to hold their practitioner accountable in the criminal justice system if they can prove they have suffered serious harm.
11. We strongly urge the Select Committee to listen to rainbow communities, particularly those with lived experience of conversion therapy, to determine whether Section 8 should include people of all ages.

Prosecution only under consent of the Attorney General

12. In relation to making conversion practices an offence, we acknowledge concerns from rainbow communities that the Bill contains barriers to a successful prosecution. Under section 12 it states that there will be no prosecutions without the Attorney General’s consent.
13. This is a very high threshold for prosecution, which could add another layer of bureaucracy and potential for political interference in the lives of rainbow communities, whilst also being potentially difficult to enforce. We strongly urge the Select Committee to listen to rainbow communities when assessing if this threshold is appropriate.

Part Three: Provide a civil redress scheme for conversion practices using the Human Rights Commission's existing functions

14. The Bill uses the Human Rights Commission's existing functions and complaints system to provide a civil redress scheme for conversion practices, creating a pathway for survivors of conversion practices with a focus on remedying harm and preventing it from happening again.
15. While we welcome such a pathway, we note the considerable onus and burden placed on the individual. Research undertaken by rainbow communities in Aotearoa New Zealand found that rainbow communities experience disproportionately poorer mental health outcomes and are at increased risk of suicide than the general population.²
16. We have heard feedback that victims and survivors may not have the capacity to navigate the complicated processes of the Human Rights Commission, Human Rights Review Tribunal or the criminal justice system. We consider it essential that adequate support and complaints advocacy is available and easily accessible to assist with navigating these processes.
17. We note feedback from rainbow communities about the need for access to appropriate and safe supports for people experiencing mental distress. We urge the Committee to work with rainbow communities on appropriate and safe solutions for those experiencing mental distress from conversion therapy.

Conclusion

The Mental Health and Wellbeing Commission supports the Conversion Practices Prohibition Legislation Bill's aim to ban conversion practices, while strongly supporting issues raised by the rainbow communities.

We urge the Select Committee to work with rainbow communities (including trans and people with variations of sex characteristics), and in particular those with lived experience of conversion therapy, to come up with solutions to the concerns raised in this submission and by rainbow communities.

² [Counting Ourselves Report Dec 2019](#)