

28th January 2021

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RE: Consultation on the Sexual Orientation and Gender Identity Conversion Practices – Issues paper 31

Thank you for the opportunity to comment on the Issues Paper relating to Sexual Orientation and Gender Identity Conversion Practices.

AMA Tasmania is the state's peak medical advocacy group representing doctors across all disciplines and throughout all levels of the health system.

The AMA nationally has long held the view that the use of "reparative" or "conversion" therapy that is based upon the assumption that homosexuality is a mental disorder and that the patient should change his or her sexual orientation is wrong. In more recent times, a growing number of jurisdictions have been legislating to ban conversion therapies relating to sexual orientation and gender identity.

AMA Tasmania has consulted with our membership on the TLRI Issues Paper. There was a strong view that Sexual Orientation and Gender Identity (SOGI) conversion practices are harmful and should be banned. However, there was also some concern as where the line is drawn on what constitutes conversion practices, when seeing a person with dysphoria. Some of these complexities were discussed in the AMA Queensland submission on the *Health Legislation Amendment Bill 2019 (the Bill)* dated 31 January 2020 (see attachment).

Definition of SOGI Conversion therapy

There was largely agreement from our members with the definition as proposed by the TLRI, but like any definition, it will be how the words within it are interpreted and thus the line drawn on what constitutes conversion therapy and how the intent that sits behind an act or statement can be proved, that will be important.

Role of the Clinician

The strong theme to emerge from our consultation was that this must be viewed as a clinical and health issue and that there must be a safe space for doctors together with their patient to be able to explore issues relating to the patient's sexual orientation or gender identity.

"It needs to be acknowledged that there is a role for clinicians to spend time with (especially) young people who express a gender preference other than their natal gender to assist them to explore this - not in any attempt to dissuade them from expressing their preference but to assist them in working through any decision regarding a gender transition. Sections 213F(2) and 213F(3) of the Public Health Act QLD do address this. In 213F(3)(e) mention is made of a person's development - this is actually very important- it is recognised that in adolescence individuals may question their gender identity - and this is seen for many as a 'normal' developmental experience - for many they work through this and determine they are comfortable with their natal gender - some go on to a desire to undergo gender transition. Unfortunately, some groups assert that any exploration of such feelings is inappropriate and would consider this a part of SOGI conversion practice. It is important that such exploration by a clinician is allowed and seen as clinically appropriate – see 213F(2)(a)"

Some concern was also raised that the Victorian legislation, currently before the Parliament, goes too far, the perception being that it forbids anyone from ever saying anything other than agreeing with the person's statement on their gender identity.

"Ultimately the goal is to ensure that they are sure, given the permanent nature of gender reassignment and the potential for significant harm, but questioning is sometimes necessary in the course of getting to that point."

We are aware of concerns within the Psychiatric community in Victoria that their legislation may constrain the legitimate practice of psychiatry/psychotherapy in treating patients experiencing gender dysphoria and as a result, psychiatrists might decline to provide such services in future.

Consent to SOGI Conversion Therapy

If we agree that SOGI conversion practices are harmful and the proposal is to ban them, then people should not be allowed to consent to such practices.

Should it be a criminal offence?

While supporting the banning of such practices, AMA Tasmania members want to ensure that doctors are not left open to criminal prosecution for asking what they consider to be necessary questions to understand their patients' needs and desires.

Healthcare professionals acting in good faith and in accordance with reasonable standards of diagnostic assessment, clinical counselling and patient management must never be exposed to criminal sanction for competently doing their job. Members would prefer that where there is an issue with a health professional, that that be referred to the Australian Health Practitioners Registration Authority (AHPRA) for further investigation and sanction.

However, if the decision was to make it illegal under the law for all registered or non-registered persons to provide SOGI conversion therapy, then doctors would prefer for it to be treated as a summary offence rather than a criminal offence. Proving intent sufficient to satisfy the elements of

a crime would be harder to achieve and a summary offence would strongly discourage any doctor from using such practices, while also ensuring that sanctions, such as fines or placing restrictions on a person's practice, could be placed on any person who crossed the line into conversion therapy.

Other issues

It is important to note that in the AMA QLD submission, comments are at times referring to more than the practice of conversion therapy. For example, Prof. Morris comments on the use of hormonal and surgical interventions to transition to the preferred gender. This is a different, but very important issue. It is critical that the two should not be conflated. When and how hormonal and surgical therapies should be made available is still a very controversial issue with opposing opinions strongly expressed. The proposal to bring together the various medical Colleges, AMA, NHMRC and so on to develop practice guidelines for assessment and treatment of children and adolescents under the age of 18 years presenting with gender dysphoria is timely and extremely important- but is a different (albeit related) issue than what should be done regarding SOGI conversion practices.

In summary, AMA Tasmania supports a ban on Sexual Orientation and Gender Identity Conversion Practices, but it must not come at the cost of good patient care.

Thank you once again for the opportunity to consult with doctors on this important issue.

Yours sincerely



Dr Helen McArdle
President AMA Tasmania

Attached: Submission from AMA Queensland
https://qld.ama.com.au/sites/qld/files/QLD/PDFs/Policy/AMAQ_Conversion-Therapy_January2020.pdf