

Submission on the Conversion Practices Prohibition Legislation Bill  
To the Justice Committee  
04/09/2021

This is a submission from Gender Minorities Aotearoa.

Gender Minorities Aotearoa is a national organisation for transgender, intersex, and irawhiti takatāpui people in New Zealand. It operates on Te Pae Māhutonga kaupapa Māori public health framework, and The Ottawa Charter (1986). We carry out research and develop transgender resources, which are accessed over 118,000 times every year. We also provide a range of services including a one to one peer support service which is accessed over 1,300 times every year. This service includes assistance with health navigation, human rights, and discrimination. There is no other non-government organisation in New Zealand with more experience in working with transgender populations.

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We support the intent of this Bill, however as it stands we believe it does not fulfill it's intent to protect transgender populations from conversion practices.

The following are our main concerns. Our other concerns will be addressed in a joint submission as part of the Rainbow Services Collective.

Every year we hear the personal stories of a great number of transgender people who have experienced conversion practices in healthcare settings.

They are offered anti-depressants as an alternative to being trans, or told that are simply confused and need counseling, while being referred to a counsellor who doesn't "believe in" being transgender.

## Conversion Practices Carried Out in a Healthcare Setting

The Bill states that:

### **The purpose of this Act is to—**

- (a) prevent harm caused by conversion practices; and
- (b) promote respectful and open discussions regarding sexuality and gender.

However, in its current state it defines conversion practices as not including conversion practices which are carried out in a healthcare setting. This allows healthcare providers to continue to engage in conversion practices with vulnerable patients, and effectively excludes transgender and intersex people from protection in the setting where they are most likely to experience conversion practices.

In clause 5, the Bill states:

### **Meaning of conversion practice**

- (1) *In this Act, conversion practice means any practice that—*
- (a) is directed towards an individual because of the individual's sexual orientation, gender identity, or gender expression; and*
  - (b) is performed with the intention of changing or suppressing the individual's sexual orientation, gender identity, or gender expression.*

(2) *However, conversion practice does not include—*

- (a) a health service provided by a health practitioner in accordance with the practitioner's scope of practice; or*
- (b) assisting an individual who is undergoing, or considering undergoing, a gender transition; or*
- (c) assisting an individual to express their gender identity; or*
- (d) providing acceptance, support, or understanding of an individual; or*
- (e) facilitating an individual's coping skills, development, or identity exploration, or facilitating social support for the individual; or*
- (f) 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.*

The Bill compares this to similar legislation in Australia, however, all the similar

exemptions in the Victoria Act are prefaced by the requirement that the practice “*is supportive of or affirms a person's gender identity or sexual orientation*”.

This exemption for conversion practices in healthcare settings is not something that was suggested in the Regulatory Impact Assessment (RIA). The RIA only suggested that conversion practices are not common in healthcare settings. While this may be true for gay, lesbian, bisexual, and other sexuality minorities, it is completely contradictory to the available evidence on transgender and intersex populations, including the evidence cited by the RIA.

We need to ensure that this error is not carried through into the legislation and compounded.

## Conversion Practices in Healthcare Settings Target Transgender People

The Counting Ourselves (2019) transgender research report found that more than one in six of all participants (17%) reported that a professional, “*such as a psychiatrist, psychologist or counsellor*”, had tried to stop them being trans or non-binary. A further 12% were not sure if this had happened to them. (p.38).

Researchers asked (p.37) “*Have you had any of these things ever happen to you, as a trans or non-binary person, when you were trying to access healthcare? You were discouraged from exploring your gender...*” This means that while trying to access healthcare, these transgender people were told that they should stop being transgender. This is conversion therapy, in a healthcare setting.

16% of trans people said yes, they had experienced this. 4% said they had experienced this in the last year. This means 16 out of every 100 transgender people face routine conversion therapy from doctors, therapists, and other professionals *in a healthcare setting*.

While healthcare practitioners must be able to make medical decisions in the best interest of their patients, that is not what conversion practices are. This Bill should not include exceptions for carrying out conversion practices in healthcare settings.

If we acknowledge that conversion practices are harmful and we want to protect rainbow people from them, we should not exclude transgender people from these protections by allowing their abuse in healthcare settings.

Nothing raised in the Regulatory Impact Assessment suggests that including

conversion practices done by healthcare practitioners in the definition of conversion practices would create any issues or further risks.

## Conversion Practices in Healthcare Settings Target Diverse Sex Characteristics

The exclusion from the legislation of conversion practices that are directed/performed on the basis of sex characteristics is also unacceptable. While sexual orientation, gender identity, and gender expression are currently protected in the wording of the Bill, the Bill as it stands would allow conversion practices that target people on the basis of their variations of sex characteristics, or that aim to change their sex characteristics. This affects almost all transgender people - whose sex characteristics are not typically associated with people of their gender.

Historically, conversion practices have almost always been targeted at people based on perceived mismatches between their sex characteristics and other aspects of their sexuality and gender. Sex characteristics have often been a specific target of coercive control. It is important that the definition of conversion practices in this Bill encompasses all types of conversion therapy.

It is not necessary to use a narrow framework here: most strong definitions of conversion practices, and indeed most human rights frameworks that intend to protect rainbow communities, such as the Yogyakarta Principles plus 10, and the PRISM report by the Human Rights Commission, do not exclude sex characteristics. This is especially relevant because the Conversion Practices Prohibition Legislation Bill includes an amendment to the Human Rights Act, and therefore the definition of conversion practices in that Act will be based on the language in this Bill, should it become an Act.

If conversion practices on the basis of sex characteristics are not prohibited by this Bill, these harmful practices will continue in Aotearoa.

Nothing raised in the Regulatory Impact Assessment suggests that it would create any risks or issues to include conversion practices on the basis of sex characteristics, or aimed at changing sex characteristics, in the definition of conversion practices.

## What Needs to Change

The RIA identified a risk that conversion practitioners may adapt their practice to get around the legislation, while still performing conversion practices. In our professional

opinion, this risk applies in healthcare settings. Therefore, it is imperative that the definition of “conversion practices” is robust.

Conversion practices in healthcare settings must be included in this definition, along with the explicit addition of conversion practices on the basis of “sex characteristics” alongside “sexual orientation, gender identity, or gender expression.”

We wish to make an oral submission before the committee.