WOMEN'S REFUGE
National Collective of Independent Women's Refuges Inc
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NCIWR Submission
Conversion Practices Prohibition Legislation Bill 2021

Introduction

The National Collective of Independent Women's Refuges (NCIWR) is a non-governmental organisation delivering services to women and children affected by family violence in New Zealand. NCIWR is a central part of the solution to New Zealand's problem of family violence – both in the context of providing an immediate crisis and longer-term support.

In 2019/20, our network of 40 affiliated refuges received 42,510 crisis calls and provided 61,763 nights of secure accommodation within our safehouses, with direct assistance provided to 38,521 women and children. A large and growing percentage of our client base consists of children and young people under the age of 17 years, with 52% of these children under the age of 10 years.

Women's Refuge welcomes all women into our safe houses, programmes, and services. Our commitment to and focus on perpetrator pattern of harm ensures an inclusive approach to understanding victim's individual experiences of victimisation regardless of sexual orientation, gender identity or gender expression.

Overall statement

We would like to thank the Justice Select Committee for the opportunity to submit on this Bill. We strongly support the Government's focus on addressing, prohibiting, and enabling prosecution for practices that seek to change or suppress a person's sexual orientation, gender identity, or gender expression.

Women's Refuge works to promote political and social rights and freedoms for women and children, as the attainment of these forms of equality keep women and children safe from gendered violence. An integral part of progress toward substantive equality for all women involves challenging the dominance and widespread acceptance of harmful beliefs about gender, gendered behaviours and expectations, and sexual and gender orientations. When harmful stereotypes, assumptions, and beliefs are socially sanctioned and reproduced through institutional practices, they inform both individual and collective perpetuation of forms of oppression such as heterosexism, homophobia (and biphobia), and transphobia. These forms of oppression increase the likelihood that sexual minorities and gender minorities will be vulnerable to violence, both by implicitly perpetuating ideas about these identities and bodies as less valuable and valued, and by shaping social responses so that people with minoritised sexual or gender identities face greater barriers to accessing social, occupational, and familial stability (Dickson, 2016).

Currently, they are subjected to family violence and sexual violence at disproportionately high rates (Campo & Tayton, 2015; Dickson, 2016). The prevalence of intimate partner violence perpetrated against some rainbow communities is twice as high as for the general population. The 2021 Crime and Victimisation Survey run by Ministry of Justice reiterated this vulnerability, finding that the prevalence of violence perpetrated against lesbian and gay people is twice as high as average, and is three times as high as average for bisexual people. In addition, these communities often face multiple intersecting barriers to accessing both formal and informal support, resources, and justice. The rates of violence and barriers to formal means of support are even more pronounced for Māori. We are proud to be a takatāpui and LGBTQIA+ friendly service as we believe that everyone, regardless of sexual or gender orientation, deserves the right to freedom of identity, affirmative support, and safety.

We strongly believe that this Bill will help to prevent an already vulnerable population from further harm caused by outdated, cruel, and offensive practices that both lack evidence and undermine their basic human rights. We wholeheartedly support the intention of the Bill and the majority of the provisions within it; however, there are several points on which we seek clarity and amendment. These are detailed below. We use the terms sexual and gender minorities, queer communities, rainbow communities, takatāpui, and LGBTQIA+ interchangeably throughout in recognition that many people align with or prefer different umbrella terms.

Specific recommendations

Addressing the threshold for age

We applaud the Bill's recognition of the harm conversion practices cause to young people under the age of 18. However, conversion practices are inherently coercive and damaging, and victims of these practices do not acquire substantive social power to resist this coercion once reaching adulthood.

Women's Refuge applies an expert understanding to all manifestations of coercion, including health coercion. In the context of conversion practices, this coercion is instrumentalised through differential access to social power, such as within family contexts where dominant belief structures mean that the person impelled to access such a practice is typically manoeuvred into doing so by family members holding comparatively greater decision-making power. This coercion is rarely visible or easily discerned; it is subtle, insidious, and predicated on the specific dynamics enacted within an individual family or other similar social context. Age, consequently, is only one factor in shaping social precarity. Individuals of any age can occupy subjectively vulnerable positions (where they hold less relational or institutional power than others around them), and this has been repeatedly found to be true of those marginalised by others' responses to their sexual or gender orientations or expressions.

The implications of this potential for coercion and the influence of social precarity are twofold. First, the likelihood of coercion (often undefined by the person being coerced) is rife within conversion practices, and is almost impossible to protect against within a legitimised practice. Second, individuals who suffer the cumulative impacts of oppressive attitudes towards them have less access to support and are thus less likely to feel able to decline, challenge, or report harmful practices that are masquerading as support or guidance. When one person holds social or systemic influence and power over the other (for example, parent and child; church minister and member of the congregation; therapist or doctor and client/patient) 'conversion' practices may appear supportive in intention but do unavoidable harm by subordinating the identity of the person with greater vulnerability and campaigning for the suppression or removal of that aspect of their identity. We therefore submit that

the extent of societal adherence to oppressive beliefs about people with minoritised sexual or gender identities precludes genuine and meaningful consent to inherently harmful practices. This applies to adults as well as to minors.

Allowing these practices to be used with people over the age of 18 in any capacity undermines the intention of the Bill by allowing for the continued delegitimising of queer identities. This is incompatible with upholding important human rights. The Bill's narrow focus only on the application of conversion therapy to people who are over 18 (and therefore presumed able to give meaningful consent) implies that for adults, there may be positive outcomes or implications from conversion therapy. This assumption is not supported by the body of evidence underlining the harms associated with conversion practices. The wording of the Bill itself acknowledges these harms. Rather, well-designed research studies demonstrate a convergence of findings that conclude there is no substantive benefit from these practices. Much of the literature that affirms the benefits of conversion practices is authored by health practitioners that purport its benefits based on their own homophobic biases toward its need and importance (see Byrd & Nicolosi 2002; Nicolosi et al., 2000). This literature has since been discredited; more rigorous studies describe the practice as not only failing to achieve its anticipated outcomes, but also as significantly increasing the risk of harm to vulnerable individuals (see Alempijevic et al., 2020; Higbee et al., 2020; Jenkins & Johnston., 2004).

Such findings must be the basis for policy design regarding harmful health and social practices. We therefore request that the committee consider what value there could possibly be in allowing individuals of any age to be subjected to conversion practices, regardless of perceived or superficial (including coerced) consent/assent. In contrast, an explicit ban of these harmful practices paves the way for queer communities and survivors of conversion practices of any age to access identity-affirming support, and by extension, a reduction in the structurally embedded drivers of their vulnerability to violence.

Addressing Section 5(2)(a)

Our concern is that this clause falls short of effectively stemming the practices that are instrumental in facilitating disparate health outcomes for queer communities. We acknowledge the need to be cautious about potentially discouraging health practitioners from offering legitimate support or therapy for fear of liability under the proposed new provisions. Equally, however, we argue that non-oppressive practice is a core tenet of all recognised allied health and social practice professions. It is reasonable to expect that these professionals can differentiate between supportive practices that are identity-affirming and interventions that deny or suppress these identities and cause significant harm.

Aotearoa New Zealand has made tremendous progress in addressing inequities, but still faces a long road ahead in its aspiration to reach health equitability for rainbow communities. Practitioners and services (even when well-meaning), do not always fully understand, prioritise, or offer inclusive non-judgemental support to queer individuals. Gender Minorities Aotearoa, for example, have a National Health Database on their website directing queer New Zealanders to health services that are known to be supportive and safe for the person seeking care. The felt need for such a list is testament to the everyday inadequacies of health providers to meet the specific needs and contexts of our rainbow communities. 'Doing no harm' by ceasing identity-denying practices is an excellent first step toward addressing this. Finally, as we noted above, health practitioners already have significant power to influence how members of marginalised communities think and feel about their identities, and how they experience support, health services, and social stability. There must be no accepted excuse for

continuing to practise in ways that are premised on oppressive beliefs about sexual and gender minorities.

Addressing Section 5(2)(f)

Although we advocate for freedom of speech, including for religious beliefs, we dispute the need for Section 5(2)(f) in its current form. We believe this exemption will embolden institutions or members acting on behalf of institutions to carry out harmful practices while defaulting to the seemingly legitimised excuse of 'not intentionally causing harm'. The harm that conversion practices are known to cause is not negated by a religious backdrop. There must be no exemption for religious groups to deliver services using practices that undermine people's rights to freedom from discrimination. The wording of this Section specifies that 'conversion practices' do not include the expression of belief that is not intended to change or suppress an individual's orientation, identity, or expression. The vagueness of this wording 'not intended' is problematic for several reasons.

First, intention is subjective. If they do not begin with the express intention of suppressing the vulnerable person's identity but practice in ways that effectively suppress, deny, or attempt to alter their orientation or identity, this no less constitutes a conversion practice. It also does not equate to less harm than if the 'intention' is clear. The phrasing in Section 9(1)(a) *"knew that performing the conversion practice would cause serious harm to the individual"* is problematic. The word 'knew', suggests an advance understanding of or forethought towards harm, thus leading to a need for proof of the intent to cause harm.

Second, proving intention is prohibitively difficult even if there is apparent harm, making the prospect of successful prosecution highly unlikely. Classifying a harmful act as only *potentially* an offence, contingent on whether it can be established that it was 'intended', serves to dilute the likely success of the Bill in deterring conversion practices. This has been found with similar provisions which have later been found lacking and have required amendment. For instance, the Harmful Digital Communications Act 2015 introduced provisions classifying non-consensual sharing of intimate content as a (potential) offence, contingent on whether the person sharing the content did so intending to cause harm to the victim. This resulted in questionable court judgements where an absence of documentation evidencing the intention to cause harm precluded criminal accountability, and many other cases where the burden of proof relating to intention stopped cases from proceeding to prosecution. This year, we were provided with a prime example of this by a victim of partner violence in relation to HDCA offences. Police sought advice from Crown Law about whether the act of secretly posting intimate recordings on pornography websites had a realistic chance of being successfully prosecuted. The victim suffered immense mental health consequences after discovering this violation, and then again after discovering several subsequent postings of the recording. It necessitated time off work and lengthy therapy, and caused an ongoing distrust of future potential partners. The Crown Law advice to Police stated "in this specific case, the threshold for the intent to cause harm has not been met". The outcome of this case attests to the inherent difficulty in proving 'intent to cause harm'. Yet, as we have set out above, intent does not need to be explicitly stated or communicated for both coercion and serious harm to occur.

Third, often the onus for identifying, explaining, and instigating a justice response sits with the individual who has been harmed. This point will be covered in more detail under 'addressing Section 9(1)(a/b)' below.

Addressing Section 9(1)(a/b)

This Bill aims to prevent harm known to be associated with conversion therapies. What 'harm' is addressed is therefore central to how effective its provisions will be at meeting the Bill's stated aim. Above, we discussed the pitfalls of subjective definitions when setting criteria regarding whether an act is an offence or not. Just as 'intention' is subjective and can complicate usability, so is the term 'serious harm'. In our experience of supporting victims of offences specified by the HDCA, the same threshold of 'serious harm' has meant that even long-lasting, debilitating forms of harm are often excluded. This prevents victims from having any access to effective justice outcomes, particularly if applied by decision-makers without specialist input to give meaning and context to the individual's experience of harm. This has now been recognised by policymakers; the Harmful Digital Communications (Unauthorised Posting of Intimate Visual Recording) Amendment Bill is currently before the House and removes the requirement for 'intent' and the present subjectivity regarding harm experienced. We believe there is a strong equivalence argument; greater emphasis should be on whether practices occurred rather than the forethought of the person carrying these out. We accordingly request that the Committee either specifically classify what both 'intent' and 'serious harm' mean or remove them entirely.

Addressing Attorney-General consent

We submit that if this Bill is to effectively meet its stated purpose, unnecessary barriers to enacting the provisions set out within it should be removed. We feel that criminalising conversion practices is necessary and overdue, and the establishment of these offences should be administered in a manner consistent with other offences, without the need for consent of the Attorney-General. The addition of a multi-step prosecution process may impede people's understanding of the process and lead to both non-reporting and attrition. In our experience, willingness to report is often influenced by victims' perceptions of the viability of a justice pathway.

Utilising inclusive language

We believe there is value in explicitly naming intersex and transgender people when specifying 'orientation, identity, and gender expression'. This is to ensure that these groups are covered, and the provisions of the Bill are not assumed to be limited to only cover sexual orientations.

Conclusion

We believe while the intention of the Bill is clear, specific provisions need strengthening and clarification so they can give full effect to Bill's purpose. The Bill represents a quantum leap forward in protecting the interests of queer individuals and rainbow communities by prohibiting the use of harmful practices through which oppressive and discriminatory beliefs are manifest. We hope that the Bill will explicitly demonstrate Aotearoa New Zealand's support for diverse communities and signal our continued progress toward substantive equality for all.

Please note we would like to appear in person to give an oral submission to the Committee if possible.

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