



Thursday 21st November 2019

To the Stakeholder Engagement and Inclusion team,

Joint submission to the Department of Justice and Community Safety on the legislative option to ban conversion therapy practices in Victoria

We welcome this opportunity to provide our contribution to the critical issue of conversion practices in our community. It is our position that there is nothing broken that requires fixing when a person expresses their sexuality and/or gender identity.

Further to this, we understand that practices such as conversion therapy are a contravention of a person's fundamental human rights; that the harm that may be caused by people subjected to such practices can have immediate and long-lasting adverse effects on health; and that conversion practices in the main diminish, devalue, and attempt to erase the presence of LGBTQ+¹ people in our society.

Jewish Care (Victoria) Inc. (JCV), Australia's largest Jewish community service organisation, and the **Jewish Community Council of Victoria (JCCV)**, the peak body for Victorian Jewry, representing over 52,000 Jews and more than 50 Jewish communal organisations, have a long-standing collaborative relationship driven by the desire to ensure a vibrant, richly diverse, and resilient Jewish community in Victoria. As such, we have jointly prepared the following submission for consideration.

JCV and JCCV agree that for the purpose of this submission our definition of conversion practices is aligned with the Health Complaint Commissioner's own definition. It is our firm view that the use of conversion practices, being:

- (i) *any practice or treatment that seeks to change, suppress or eliminate an individual's sexual orientation or gender identity,*
- (ii) *including efforts to eliminate sexual and/or romantic attractions or feelings toward individuals of the same gender or outside the gender binary, or efforts to change gender expressions.*

¹ The Department of Justice and Community Safety's Legislative Option to Implement a Ban on Conversion Practices Discussion Paper uses the term 'LGBTIQ' throughout, however we acknowledge that people with an intersex variation are, for the most part, heterosexual and cis-gendered. Given conversion therapy is fundamentally an approach to address a person's sexuality and/or gender expression we have intentionally used the term LGBTQ+ in our submission.

However, we believe additional specificity and scope in the definition would ensure that a more robust set of protections is afforded to the community and reduce the risk of religious institution/s using various 'soft' techniques to attempt to modify an individual's sexual orientation or gender expression.

The approach adopted in Nova Scotia's *Sexual Orientation and Gender Identity Protection Act* is resolutely aligned to our position, and we would support a shift in not only an expansion of the definition, but indeed a review of the term currently used (i.e. 'conversion practices' versus Nova Scotia's 'change efforts'). We propose the following be considered, and included, in the definition of the currently framed 'conversion practices':

- (i) *any practice or treatment that seeks to change, suppress or eliminate an individual's sexual orientation, or any practice, treatment, counselling, therapy, behaviour modification technique, prescription or administration of medication, or any other purported treatment, service, or tactic used that seeks to change, suppress, or eliminate an individual's sexual orientation or gender identity,*
- (ii) *including efforts to eliminate sexual and/or romantic attractions or feelings toward an individual/s of the same gender, or outside of the gender binary, or efforts to change gender identity and/or expressions.*

Exclusions to the definition

We do not believe there are any ethical treatments or practices that are aligned with modifying, or attempting to modify, an individual's identity and/or expression. Individuals seeking support and care when exploring their sexual orientation, gender identity, or gender expression should instead be provided options, information, and/or referrals to registered counsellors, psychologists, psychiatrists, psychotherapists, social workers, or be directed to organisations that provide reputable and consistent support and referral services like Beyond Blue, headspace, Jewish Care (Victoria) Inc and LGBTQ+ specialist support organisations such as Switchboard, QLife, Transgender Victoria, PFLAG, Zoe Belle Gender Collective, Keshet Australia Inc, Aleph Melbourne and/or the Jewish Lesbian Group of Victoria.

Scope of Protections

The scope of protection must include any, and all, individuals deemed vulnerable to conversion practices resulting from inability to provide informed consent, impaired capacity to self-advocate and/or self-protect, and those facing external pressures to comply with participation in such practices, explicitly including individuals:

- (i) *under the age of 18 years;*
- (ii) *aged 18 years or above, who are, or may be, unable to provide explicit and informed consent due to cognitive impairment, mental health conditions and/or intellectual disability; and/or*
- (iii) *unable to protect themselves against the risk, harm, or exploitation created by social, familial, or religious pressures. Including threats of exclusion from community, removal of family supports and relationships, and/or excommunication/exclusion from religious congregations/communities.*

Whilst it is our clear position that conversion practices are abhorrent and should be banned, we are cognisant that in a free society, individuals aged 18 and over who are not considered vulnerable should be free to make their own decisions – noting clearly our definition of vulnerability. However, this must also be in the context of ongoing, publicly funded and locally designed awareness campaigns produced in collaboration with local organisations, particularly in isolated, culturally and linguistically diverse communities. JCV and the JCCV would welcome an opportunity to be involved in this collaboration.

In our joint view, a total eradication of these practices across the entire community would be the ideal outcome and protection for LGBTQ+ individuals and communities, we understand the complexity in being able to enforce a broad community-wide ban. Indeed, such actions could make help-seeking for affected people more complicated as practices could potentially become covert. We would welcome, however, any robust solution to bring about broader change across all members of the community, however understand the complex nature in achieving such an end.

Regulation of practices

We firmly believe that any regulatory process or body being considered must include in their remit the powers of restricting, banning, and/or imposing penalties on any individual/s and/or organisations that advertise, promote, conduct, or teach any form of conversion practices, or part thereof, to those under 18 years and vulnerable groups as previously defined.

Private or public practices

Mandatory reporting should apply in all instances whether in private or public, and regulation of practices should be limited to professionals and professional settings only. For example, mandatory child abuse and neglect reporting applies to professionals and professional settings such as educational institutions, disability service providers, hospitals, children's services, community health providers, religious bodies, and housing services. Whereas child abuse offences and family violence laws cover a broader scope of a behaviour, regardless of the professional status of an alleged perpetrator, or where the alleged abuse occurs.

To ensure private instances of conversion therapy being conducted by non-professionals, and/or the coercion, threats, or forced submission into conversion therapy conducted by professionals and/or non-professionals by family members, requires amendments to relevant legislation and governing processes that broaden the definition of child abuse and family violence to align with the vulnerability definitions we have provided. We would be supportive of such an amendment.

Civil or criminal law

A civil regulator would ensure a timely process for victims of conversion practices without having to navigate the public court system, unless an appeal is being sought. Individuals, and where part of an organisation the directors/partners/owners, who are found guilty by a civil regulatory scheme for suggesting and/or promoting conversion practices would face fines and risk the loss of any applicable registration for the organisation or business they operate. Whereby a government-funded agency/organisation is found guilty by a civil regulatory scheme, the entity would risk the temporary/permanent loss of full/partial funding and/or the relevant licensing/credentialing to operate for a fixed term, temporary periods, and/or

under a limited capacity with specified restrictions. Subsequent to findings, sanctioned individuals/officeholders would not be permitted, and would face criminal penalties, to access or associate with any organisation or entity that has direct contact with vulnerable persons, as defined, or children under the age of 18 years.

Under any civil regulatory system, there must be considered and thorough appreciation of the vulnerability of victims, and that civil cases require the victim to bring the matter forward themselves. The impact on individuals subjected to these practices can already result in shame, isolation, further abuse, poor mental health outcomes, and self-harm, all of which could limit an individual's willingness or ability to bring the matter forward. Civil proceedings, without due consideration of these factors may not be explored by victims as a result of low expectations of a satisfactory outcome versus the impact on a victim's emotional state.

Criminal penalties could also play an important role in regulating abuse in this area. One option would be to adopt a similar system as is currently operating in other areas of abuse. That is, if a person is found to have committed a civil offence, and an order issued stating that the abuse must not be repeated, any subsequent breach of that order would constitute a criminal offence.

Religious freedom

Longstanding community traditions, biblical commandants, domestic roles/dynamics (often gendered and heteronormative), and interpretations of religious texts are a number of contributing factors when individuals have fallen victim to conversion practices under duress or coercion, and these same factors are often used as the justification for individuals and/or groups to provide conversion therapy practices.

The balance of religious freedoms and universal human rights is complex and can be argued, by some, to be the same topic. It is our view that it is fundamental that all individuals in our community are afforded the right, to live without threat of, or actual, abuse, and to be provided the support to achieve this. Use of conversion therapy practices under the banner of religion, should not be seen as any different to those being used outside of that context.

We would strongly advocate that systems, legislation, and regulation must support a person's universal right to freedom from abuse, in any form, and that these regulations are the overarching framework when considering the balance of other freedoms people and/or institutions may have (i.e. freedom of religion).

Other considerations

The scope of this consultation specifically relates to the legislative options to implement a ban on the use of conversion therapy. However, it is our position that a wider lens be taken to address the peripheral issues related to these practices and the impact they can have on victims both in the immediate moment and over long periods of time.

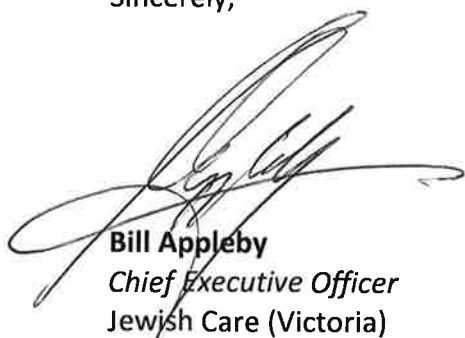
We would support a government and community education awareness campaign on the use of these practices, the harm they cause, and alternative supports that should be offered. This education campaign is particularly important within culturally and linguistically diverse communities, and within pastoral settings and practices.

The need for resources and support services to be funded by government to provide appropriate counselling and psychological supports for victims and survivors is critical for those already impacted by these practices. A legislated ban on future conversion therapy may prevent a person becoming a victim, but there are many in our community that have already been subjected to these practices and the harm has already been caused.

Likewise, government funding is required to provide an extensive professional education program that can be accessed by registered counselling practitioners, social workers, psychologists, and other allied health supports, on the sensitivity and complexity of supporting victims of conversion practices.

We thank the Department of Justice and Community Safety for the opportunity to share our views, provide our recommendations, and for any future collaboration to assist in the change. The matter being discussed is deeply profound, however not nearly as profound as the impact on people subjected to these objectionable, damaging, and ineffective practices. We look forward to seeing the Victorian Government's leadership in bringing about changes in how people identifying as LGBTQ+ are being treated in our community.

Sincerely,



Bill Appleby
Chief Executive Officer
Jewish Care (Victoria)



Jennifer Huppert
President
Jewish Community Council of Victoria