

8 September 2021

Dear Justice Committee

Conversion Practices Prohibition Legislation Bill

Tuia te rangi e tū nei
Tuia te papa e takoto nei
Tuia i te here tangata
Tihei mauri ora
He hōnore, he korōria ki te atua ki te runga rawa
He whakaaro maha ki a rātou kua haere ki te wāhi ngaro
Rau rangatira mā, ānei ngā whakaaro me ngā kōrero nā Te Tūāpapa Hauora
Hinengaro

Introduction

Thank you for the opportunity to comment on the Conversion Practices Prohibition Legislation Bill (the Bill).

The Mental Health Foundation of New Zealand (MHF) wishes to see the end of conversion practices in Aotearoa New Zealand. As such, **we are highly supportive of the Bill's intention to make it unlawful for any person to perform conversion practices on another person. We believe this Bill sends a strong signal that conversion practices have no place in Aotearoa.** It is clear from the views of rainbow and takatāpui¹ communities and as evidenced in literature that conversion practices are harmful, with the potential for significant negative impacts on mental health and wellbeing, particularly to youth.

To stop and prevent conversion practices in Aotearoa, the MHF supports a multi-pronged approach, including:

- a) community-based actions to promote the inclusion and dignity of, and prevent prejudice and discrimination toward, our rainbow and takatāpui communities

¹ Te ao Māori recognises diverse gender expressions and sexualities. 'Takatāpui', a traditional Māori term meaning 'intimate companion of the same sex,' has been adopted since the 1980s by Māori who are whakawahine, tangata ira tāne, lesbian, gay, bisexual, trans, intersex or queer.

- b) community-based education and support to prevent conversion practices from happening
- c) a civil redress scheme *accessible to all survivors* of conversion practices, and
- d) criminal prosecutions for the most egregious of cases.

Points a) and b) would contribute towards the Bill's stated purpose to 'promote respectful and open discussions regarding sexuality and gender'.

We make several recommendations to strengthen the Bill, including clarifying the scope of the Bill to ensure it captures a broad range of harmful cases, and ensuring the processes to report breaches of the Conversion Practices Prohibition Legislation Act and the Human Rights Act are safe, supportive, effective, sufficiently funded, and designed alongside rainbow and takatāpui communities.

Summary of recommendations

1. Acknowledge in the Bill's explanatory note that a sense of connection and belonging to one's identity, whether that be gender or sexual identify or expression, is an important protective factor for people's mental wellbeing.
2. Provide an update on, and progress work, to protect intersex people from coercion and pressures in healthcare settings.
3. Ensure the definition of serious harm is broad enough to include mental distress (where conversion practices are used on adults) and does not impose an undue burden on people to 'prove' their harm is valid.
4. Clarify at what point might a charitable organisation be held accountable for unlawful practices committed by individuals representing that organisation.
5. Remove the requirement for the Attorney-General to approve prosecution under the Act.
6. Ensure there is a clear, safe, well-funded and effective process to report conversion practices under the Human Rights Act and act upon them.
7. Ensure the privacy of those who report conversion practice breaches is protected.
8. Extend ACC to provide cover for victims and survivors of conversion practices.
9. Implement a workforce development scheme to upskill current and future psychologists and counsellors to ensure the workforce has capacity and expertise to meet the needs of rainbow and takatāpui communities.

10. Implement a whole-of-government strategy or action plan to improve inclusion and eliminate prejudice and discrimination against members of rainbow and takatāpui communities in Aotearoa.

Conversion practices are prevalent in Aotearoa

Although we have limited information about the prevalence of conversion practices in Aotearoa, we do know that 17 percent of trans and non-binary participants in the *Counting Ourselves* report² had been subjected to conversion therapy in the medical profession, while 12 percent did not know whether they had experienced conversion therapy. We have also seen anecdotal evidence of conversion practices reported through the media and social media.

Conversion practices are harmful

We commend the Government for acknowledging that conversion practices do not work and can contribute to issues such as low self-esteem, depression, anxiety, and suicidal thoughts and attempts (see explanatory note). We agree conversion practices pose a serious risk of harm, including to people's mental health and wellbeing. Leading health bodies from the United States have stated conversion therapies are improper, ineffective and pose dangers, particularly for youth, including, "increased risk of anxiety, depression, decreased self-esteem, social withdrawal and isolation, homelessness, substance abuse, and suicidality."³

Preventing conversion practices will benefit takatāpui Māori

We commend the Crown's recognition of their obligations under te Tiriti o Waitangi to reduce disparities experienced by takatāpui Māori. Preventing conversion practices in Aotearoa will better protect takatāpui from serious accounts of conversion therapy. Rangatahi takatāpui, in particular, may face harmful discrimination based on their gender identity and sexuality, with harmful impacts on wellbeing. For example, "wairua (spirit) can be damaged when whānau react badly

² Veale J, Byrne J, Tan K, Guy S, Yee A, Nopera T & Bentham R. (2019). *Counting Ourselves: the Health and wellbeing of trans and non-binary people in Aotearoa New Zealand*. Hamilton, New Zealand: Transgender Health Research Lab, University of Waikato. 38.

³ Declaration on the Impropriety and Dangers of Sexual Orientation and Gender Identity Change Efforts. Retrieved from <https://www.hrc.org/resources/the-lies-and-dangers-of-reparative-therapy>

to a child who identifies in ways that are unexpected,"⁴ which then leads to negative effects on taha hinengaro (mental health) and taha tinana (physical health). This sort of rejection by whānau may take years to overcome and often it is through wider members of the whānau or community to influence and persuade families to be more accepting⁵.

The Bill is in step with national and international movements

This Bill is in line with international movements to ban conversion practices. The Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity called for a global ban on conversion therapy in May 2020 at the United Nations Human Rights Council.⁶ At least 11 other countries have implemented bans on conversion practices, and seven other countries have introduced similar bills, including Australia and the United Kingdom.

Here in Aotearoa, the code of ethics for the New Zealand Psychological Society, NZ College of Clinical Psychologists and the New Zealand Psychologists Board are clear that conversion therapy is unethical. The implementation of this Bill will enshrine these views into law and provide an additional pathway for redress.

Sense of identity, belonging and acceptance by whānau are protective factors for mental wellbeing that must be nurtured

It is widely recognised that trans and gender non-conforming individuals experience disproportionate rates of negative mental health outcomes compared to gender- and hetero-normative people, as well as gender-normative members of rainbow and takatāpui communities⁷. These outcomes are mainly due to rejection, stigma and discrimination, while "family support, identity pride, and particularly peer support serve as protective factors."⁸It therefore leads that a positive belief in one's

⁴ Kerekere, E. (2015) *Takatāpui: Part of the Whānau*. Auckland. Tiwhanawhana Trust and Mental Health Foundation. 10.

⁵ Hawkins, G. (1995) "A Discussion Paper on Transsexualism from a Māori Perspective" in Te Kawa a Maui (1998) *Te Huinga Takatāpui Course Reader*. Wellington: Victoria University of Wellington. 94.

⁶ *Human Rights Office of the High Commissioner*. (2020). Retrieved from <https://www.ohchr.org/EN/Issues/SexualOrientationGender/Pages/ReportOnConversiontherapy.aspx>

⁷ Carmel, T.C., & Erickson-Schroth, L. (2016). Mental Health and the Transgender Population. *Journal of Psychosocial Nursing and Mental Health Services*, 54(12), 44-48.

⁸ Bockting, W. (2014). *The Impact of Stigma on Transgender Identity Development and Mental Health*. (319-330).

own sexuality or gender identity is a prominent protective factor against mental distress, in addition to self-esteem and support from one's whānau and community.⁹

Conversion practices work to disrupt these gender affirmations and weakens an individual's sense of gender identity. This legislation is a good step in helping to boost a sense of identify and belonging and prevent some victimisation of rainbow and takatāpui communities. This in turn will help reduce some risk of mental distress and poor wellbeing, and some incidences of serious mental distress and harm, such as suicide.¹⁰

Recommendation 1: Acknowledge in the Bill's explanatory note that a sense of connection and belonging to one's identity, whether that be gender or sexual identify or expression, is an important protective factor for people's mental wellbeing.

Ensure intersex people are protected in Aotearoa

The Bill does not include protection for intersex individuals that may be pressured to undergo medical procedures. We note the Regulatory Impact Assessment states the Ministry of Health is developing policies to protect intersex children from unnecessary medical procedures. We support this work and request an update on this work be provided as soon as possible and legal protection for intersex people is progressed. This should be co-designed with the intersex community and representative groups and should be accompanied by education and community-led initiatives to promote inclusion and dignity of, and prevent discrimination towards the intersex and wider rainbow communities.

Recommendation 2: Provide an update on, and progress work, to protect intersex people from coercion and pressures in healthcare settings.

Ensure a broad definition of 'serious harm' that includes mental distress

The Bill currently criminalises conversion practices directed at individuals under 18 years old. For those older than 18, it must be proven the practice caused 'serious harm' for the individual for it to be treated as a criminal offence.

⁹ Hall, W.J. (2018). Psychosocial Risk and Protective Factors for Depression Among Lesbian, Gay, Bisexual, and Queer Youth: A Systematic Review. *Journal of Homosexuality*. 65(3), 263-316.

¹⁰ Brooker, A.-S., & Loshak, H. (2020). *Gender Affirming Therapy for Gender Dysphoria: A Rapid Qualitative Review*. Canadian Agency for Drugs and Technologies in Health.

We recommend the committee expands and further clarifies what does and does not constitute 'serious harm'. With regards to mental distress, we endorse a low threshold and a definition of 'serious harm' that encompass more than diagnosable mental conditions or 'illnesses' and captures a broader understanding and experience of mental distress.

The consideration of harm should be subjective and the process to determine this should not place undue burden on the victim to prove their harm is valid. We recommend this definition is further developed in consultation with rainbow and takatāpui communities and the MHF is able to provide advice to help clarify this definition as it applies to mental distress.

Furthermore, we ask the Committee to clarify at what point might a charitable organisation (such as a church) be held accountable for unlawful practices committed by individuals representing that organisation.

Recommendation 3: Ensure the definition of serious harm is broad enough to include mental distress (where conversion practices are used on adults) and does not impose an undue burden on people to 'prove' their harm is valid.

Recommendation 4: Clarify at what point might a charitable organisation be held accountable for unlawful practices committed by individuals representing that organisation.

Remove requirement for the Attorney-General to approve prosecutions

We query why the Bill currently requires the Attorney-General to approve all prosecutions under this legislation. This is out of step with other similar legislation, for example the Family Violence Act does not require such consent in order to prosecute. Allowing this decision to rest with the Attorney-General, which is a political appointment, risks politicising this issue.

Recommendation 5: Remove the requirement for the Attorney-General to approve prosecution under the Act.

Civil redress process

We support the inclusion of a civil redress scheme in this Bill accessible for all survivors of conversion practices. Importantly, the redress scheme should be designed and developed with individuals and groups that represent rainbow and takatāpui communities to ensure it is accessible and easy to access for complainants.

The scheme will need to be:

- Safe – including culturally safe, trauma-informed, survivor-focused and with privacy respected.
- Supportive – offering free psychological and emotional support to survivors from counsellors and groups trained to work with the rainbow and takatāpui communities, as well as providing culturally supportive legal representation or information.
- Effective – the scheme will need appropriate measures in place to respond to breaches, such as a paying damages or other remedies for victims such as offering restorative justice approaches.
- Sufficiently funded.

It is important to create a safe and supportive reporting process for rainbow and takatāpui communities because those reporting breaches under this Bill may be doing so against members of their whānau and community and evidence which suggests that rainbow communities are less likely to report crimes committed against them than other individuals.¹¹ Clear privacy protections will help remove disincentives to report breaches, such as being further victimised by the complainant's community or those in the system.

We understand the Human Rights Commission is considering how they can ensure their role in these processes can be safe and supportive for complainants.

Recommendation 6: Ensure there is a clear, safe, well-funded and effective process to report conversion practices under the Human Rights Act and act upon them.

Recommendation 7: Ensure the privacy of those who report conversion practice breaches is protected.

Increase support available for rainbow and takatāpui communities

We recommend the ACC scheme be extended to provide support for victims and survivors of conversion practices. This would provide certainty of support for victims without always having to navigate the criminal justice or civil redress systems.

¹¹ New Zealand Crime and Victim Survey. Retrieved from <https://www.justice.govt.nz/assets/Documents/Publications/Cycle-3-Core-Report-20210611-v1.5-for-release.pdf>

Recommendation 8: Extend ACC to provide cover for victims and survivors of conversion practices.

We also recognise there is a shortage of psychologists and counsellors in Aotearoa that have sufficient training, skills and experiences to be able to work with members of rainbow and takatāpui communities and the specific issues and concerns that affect them. A dedicated programme of work is required to upskill the current and future workforce.

Recommendation 9: Implement a workforce development scheme to upskill current and future psychologists and counsellors to ensure the workforce has capacity and expertise to meet the needs of rainbow and takatāpui communities.

Legislation needs to accompany community-led solutions

A legal prohibition will be able to prevent the most egregious of conversion practices from continuing to occur in Aotearoa. However, we do acknowledge this Bill will not stop situations where people are excluded or not supported by their whānau or communities because of their sexual orientation, gender identity or gender expression and therefore it is important the Government consider this Bill as part of a comprehensive package of community-based and community-led actions to boost inclusion and eliminate prejudice and discrimination where people who identify with rainbow and takatāpui communities live, work, learn and connect. This should include a particular focus on takatāpui Māori.

The Mental Health Foundation contributes to this through its annual anti-bullying campaign Pink Shirt Day which aims to stop bullying by celebrating diversity and promoting kindness, inclusivity and positive social relationships. The campaign works closely with representative organisations for rainbow and takatāpui communities. The majority of New Zealanders (79%) were aware of the 2021 Pink Shirt Day Campaign (May 2021). The majority of those surveyed (78%) agreed the campaign encouraged them to take action and do something to stop bullying when they witness it and 70 percent agreed they would do something to increase kindness and inclusion.

Recommendation 10: Implement a whole-of-government strategy or action plan to improve inclusion and eliminate prejudice and discrimination against members of rainbow and takatāpui communities in Aotearoa.

Summary

Thank you for the opportunity to comment on this Bill. We believe this Bill provides a step forward to reduce prejudice and discrimination for our rainbow and takatāpui communities. We make a number of recommendations to strengthen the work the Government could do to further promote inclusion and acceptance for these communities.

Mauri tū, mauri ora,



Shaun Robinson
Chief Executive
Mental Health Foundation of New Zealand

About the Mental Health Foundation

The MHF's vision is for a society where all people flourish. We take a holistic approach to mental health and wellbeing, promoting what we know makes and keeps people mentally well and flourishing, including the reduction of stigma and discrimination (particularly on the basis of mental-health status).

The MHF is committed to ensuring that Te Tiriti o Waitangi and its Articles are honoured, enacted, upheld and incorporated into our work, including through our Māori Development Strategy. We are proud that Sir Mason Durie is a Foundation patron.

The MHF takes a public health approach to our work, which includes working with communities and professionals to support safe and effective suicide prevention activities, create support and social inclusion for people experiencing distress, and develop positive mental health and wellbeing. Our positive mental health programmes include *Farmstrong* (for farmers and growers), *Getting Through Together* (the national wellbeing promotion programme in response to COVID-19, in partnership with Canterbury DHB Public Health Unit) *All Right?* (supporting psychosocial recovery in Canterbury, Kaikōura and Hurunui), *Pink Shirt Day* (challenging bullying by developing positive school, workplace and community environments) and *Open Minds* (encouraging workplaces to start conversations about mental health). Our campaigns reach tens of thousands of New Zealanders each week with information to support their wellbeing and help guide them through distress and recovery.

We value the expertise of tāngata whaiora/people with lived experience of mental distress and incorporate these perspectives into all the work we do.

Established in 1977, the MHF is a charitable trust, and our work is funded through donations, grants and contract income, including from government.