



Te Ngākau Kahukura

Submission to the Justice Committee on the Conversion Practices Prohibition Legislation Bill

8 September 2021

Te Ngākau Kahukura is a national initiative that works to improve the environments around rainbow¹ young people to make sure they are affirming, welcoming and non-discriminatory. We work with professionals, organisations and wider systems that provide health, social and education support to young people in Aotearoa. We provide advice, best practice guidance and training to support systems change.

Our vision is an Aotearoa where rainbow young people are safe, valued and feel like they belong in the places where they live, learn and access healthcare and social support.

Conversion practices are incompatible with our vision. Attempts to change or suppress rainbow identities are misguided, harmful and unacceptable. Te Ngākau Kahukura strongly supports the intent of the Bill, and its stated purposes to prevent harm caused by conversion practices and promote respectful and open discussions regarding sexuality and gender.

Thank you for the opportunity to comment on this Bill. Our submission offers recommendations to strengthen the Bill to achieve its purposes more effectively.

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¹ We use *rainbow* as an umbrella term to describe people whose sexual orientation, gender identity, gender expression or sex characteristics differ from majority, binary norms. This include people who identify with terms like takatāpui, lesbian, gay, bisexual, intersex, transgender, queer, non-binary or fa'afafine, as well as people who don't use specific words for their identity, people whose identity changes over time, and people who are in the process of understanding their own identity and may not have 'come out' to themselves or others. It's estimated that people under the rainbow umbrella make up between 6 and 15% of New Zealand's population.

Protect intersex people from conversion practices

People who are intersex, or born with innate variations of sex characteristics, are often subject to medical and social practices that are intended to change or suppress their sexual orientation, gender identity, gender expression, or their variation of sex characteristics. The Bill does not currently provide protection against conversion practices directed towards an intersex person's innate variation of sex characteristics.

No clear rationale is provided for why intersex people are not protected by this proposed law. The Bill's explanatory note states that the Government's objectives in prohibiting conversion practices are to

- affirm the dignity of all people and that no sexual orientation or gender identity is broken and in need of fixing;
- prevent the harm conversion practices cause in New Zealand and provide an avenue for redress;
- uphold the human rights of all New Zealanders, including of rainbow New Zealanders, to live free from discrimination and harm.

It is not clear to us why intersex people should be left out of these objectives. Intersex people have inherent dignity that should be affirmed. They are not broken, and not in need of fixing. They deserve to be protected from the harms of conversion practices, and to be able to access redress. Like other rainbow New Zealanders, they have the right to live free from discrimination and harm.

We recommend that the Bill protect intersex people from conversion practices by:

- Including "innate variations of sex characteristics" in the Bill's purpose (s3(b)).
- Including "sex characteristics" within the meaning of conversion practices (s5).
- Including an exemption in s5(2) to allow for medical interventions that are performed for legitimate purposes, such as:
 - (x) a health service performed with the intention of changing an individual's innate variation of sex characteristics where:
 - (i) the person requests it and provides free and informed consent or assent, or*
 - (ii) it is strictly necessary and urgent to protect the life or physical health of the person, excluding from consideration social factors such as psychosocial development, atypical appearance, capacity for future penetrative sexual or procreative activity, or ability to urinate standing up; and*

Recognise that harmful conversion practices can occur in medical settings

We are concerned that the Bill provides a very broad exemption for healthcare providers in section 5(2)(a). This creates a loophole that would allow for harmful conversion practices that occur in medical settings to continue.

Transgender, non-binary and intersex people are particularly likely to experience conversion practices in medical settings. For example, the *Counting Ourselves* study found that 17% of trans and non-binary respondents reported that a professional had tried to stop them from being trans or non-binary. As drafted, the Bill leaves interpretation of appropriate practice to medical professional bodies, rather than setting clear expectations of unacceptable practice in law.

We support subclauses (b) and (c) of this section, which clarify that conversion practices do not include health practitioners providing gender-affirming healthcare, or family and friends supporting social aspects of an individual's expression of their gender or gender transition.

We recommend that subsection 5(2)(a) is removed.

Remove the provisions for criminal penalties

In our view, achieving the Bill's stated aim of preventing harm caused by conversion practices is not best achieved by introducing new criminal penalties for practitioners.

Conversion practices often involve alienation from whānau and faith communities, and cause significant damage to these relationships. Preventing harm to family relationships is best achieved through restorative processes that enable healing, rather than by increasing alienation and further damaging relationships by sentencing family members to prison time.

Where conversion practices occur in health settings, it is likely that civil penalties - such as removing a health professional's right to practice - would be more effective in facilitating a survivor's healing than seeing the practitioner sent to prison.

Given the widely acknowledged biases within Aotearoa's justice system, we are also concerned that creating criminal penalties for conversion practices may contribute to over-policing of Māori, Pacific, migrant and other marginalised communities.

In its drafting, the Bill has clearly attempted to balance civil and criminal provisions. While a wide range of practices are criminalised (s8 and 9), there is a very high bar for prosecution (s12). As a result, the current Bill would likely see very few, if any, prosecutions for conversion practices. It is likely that for grievous offences that would meet the threshold for prosecution, practices would already meet the definitions of other crimes such as Assault, Domestic Violence or Crimes of Torture.

We recommend that sections 8 and 9 are removed.

Strengthen the civil redress scheme to support justice and healing

The proposed Bill is clear that all conversion practices will be made unlawful (s15). However, it is proposed that some offences are criminalised (s8 and 9) while others are subject to civil redress through the Human Rights Commission (s15).

Since no further detail is provided in the Bill about the nature of the civil redress scheme, we have observed that many community advocates have misinterpreted the proposed Bill as only banning a subset of conversion practices - those covered by the criminal provisions. You will have received a large number of submissions advocating for broadening of the criminal provisions to cover all conversion practices, and a removal of the requirement for the Attorney General's consent to prosecute.

In our view, the Bill should instead be strengthened to provide assurance that the civil redress process will be meaningful and effective. This process should be available to anyone who has been subject to conversion practices, and should focus on supporting them to access justice and healing.

Require the development of an implementation plan

The Bill states two broad and ambitious purposes - preventing harm caused by conversion practices and promoting respectful and open discussions regarding sexuality and gender. Achieving these purposes will require significant work alongside introducing penalties for people who engage in conversion practices.

We recommend that the Bill requires the government to a develop an implementation plan for ending conversion practices in Aotearoa. This should describe and resource a wider programme of ongoing work to reduce the incidence of conversion practices in New Zealand, and to support survivors to restore relationships and access a sense of justice and healing.

Develop a specific process for civil redress through the Human Rights Commission

The Bill does not provide detail about the nature of the civil redress process to be administered by the Human Rights Commission, nor how this will be resourced and designed. The implication is that civil redress will rely on the Commission's existing systems and resources. This may not be suitable for survivors of conversion practices - for example, mediation between a survivor and practitioner has the potential to be retraumatising.

It is important that the Human Rights Commission is equipped to work with health professional bodies and religious communities to enable meaningful civil redress that can facilitate justice and healing. For example, if a health professional is found to be engaging in conversion practices, a meaningful remedy might include removing their ability to practice as a health professional until they have completed further education.

We recommend that as part of implementing this Bill, the Human Rights Commission is resourced to develop a specific, trauma-informed pathway for conversion practices complaints, designed and developed in consultation with rainbow community organisations, survivors of conversion practices and relevant health practitioners.

Provide education for faith communities, whānau and health professionals

Conversion practices arise from prejudice and ignorance, and education is critical to changing attitudes and practices. When people believe that it is possible and beneficial to change or suppress someone's gender or sexual orientation, or appropriate to 'normalise'

someone's innate variation of sex characteristics, these beliefs are often rooted in misinformation and lack of understanding about rainbow identities and lives.

The Bill recognises the connection between education and preventing conversion practices in its stated purpose to "promote respectful and open discussions regarding sexuality and gender" (s3(b)). However, there is no provision in the Bill to facilitate such discussion or education.

We recommend that as part of setting up the civil redress process, the Bill requires and resources a widespread programme of education for whānau, communities and medical professionals. This should include education about the nature and harms of conversion practices, as well as education about rainbow identities and the importance of inclusion.

Provide free psychosocial support for survivors

The Bill's policy statement recognises that conversion practices cause significant harm to people who experience them, contributing to negative mental health and social outcomes. As well as this, conversion practices can damage people's family relationships, their connection with faith communities and trust in medical professionals.

For these reasons, it is important that survivors of conversion practices have access to specialist psychosocial support to help make sense of their experiences, develop a positive sense of their own identity and repair relationships. Support services should be peer-led, trauma-informed and affirming of rainbow identities.

We recommend that as part of setting up the civil redress process, the Bill requires and resources specialist support services to be developed. Services should be co-designed with survivors of conversion practices, and available for free to anyone who has survived conversion practices at any time, whether or not they pursue a formal complaint against the people or organisations responsible for the conversion practices they experienced.

Emphasise the responsibility of organisations that provide conversion practices

The Bill focuses on the actions of individuals who undertake conversion practices. Some of these individuals are supported by organisations that may offer conversion practices as a service, or may organise, advertise or refer people to conversion practices. The law should recognise the responsibility of organisations that engage in or support conversion practices.

We recommend including a provision in this Bill to amend the Charities Act 2005 to include "providing or arranging for conversion practices" within the meaning of "serious wrongdoing". This would clarify that providing conversion practices would be grounds for deregistration of an organisation from the Charities Register.

We further recommend introducing financial penalties for organisations that organise, advertise or refer people to conversion practices. This would create a financial disincentive for organisations, including those that do not hold charitable status.

Include a timeframe for review of the law and implementation plan

The Bill has been developed in a short space of time. While we had a small amount of input into the Ministry of Justice's drafting process, we are aware that the draft Bill has had limited input from people and communities who have experienced conversion practices.

We recommend that the Bill includes a provision requiring a review two years after the Bill passes. A review should look at the extent to which the Bill's objectives have been met, including what more may be needed to prevent conversion practices from occurring, and to support justice and healing for survivors. It should not reconsider whether there is a need for conversion practices to be prohibited in Aotearoa.

Summary of recommendations

We recommend that:

- 1. the Bill protect intersex people from conversion practices by:**
 - Including "innate variations of sex characteristics" in the Bill's purpose (s3(b)).
 - Including "sex characteristics" within the meaning of conversion practices (s5).
 - Including an exemption in s5(2) to allow for medical interventions that are performed for legitimate purposes
- 2. subsection 5(2)(a) is removed.**
- 3. sections 8 and 9 are removed.**
- 4. the Bill requires the government to develop an implementation plan for ending conversion practices in Aotearoa.**
- 5. the Human Rights Commission is resourced to develop a specific, trauma-informed pathway for conversion practices complaints.**
- 6. the Bill requires and resources a widespread programme of education for whānau, communities and medical professionals.**
- 7. the Bill requires and resources specialist support services to be developed.**
- 8. a provision is included in this Bill to amend the Charities Act 2005 to include "providing or arranging for conversion practices" within the meaning of "serious wrongdoing".**
- 9. financial penalties are introduced for organisations that organise, advertise or refer people to conversion practices.**
- 10. a review is undertaken two years after the Bill passes.**