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Dear Attorney-General and Ministers

Re: Submission to Banning LGBTQ+ Conversion Practices – Consultation Paper

Feminist Legal Clinic Inc. is a community legal service established to advance the human rights of women and girls. We are also the Australian country contact for Women's Declaration International. Our comments relate primarily to the problems arising from the inclusion of 'gender identity' in the legislation.

1. Do you agree with the proposed definition of conversion practices?

No, the proposal to extend gay conversion laws to include 'gender identity' is akin to legislating Orwellian double speak. The uninitiated would naturally regard hormonal and surgical interventions for gender non-conforming individuals to be an extreme form of conversion practice, and they would be right. Unfortunately, other Australian jurisdictions have already misguidedly passed legislation that effectively mandates 'gender affirming' medical interventions. However, NSW should not feel obliged to follow in view of recent global developments that call into question this approach and which are well documented by the Society for Evidence Based Evidence and others.

2. If no, what amendments or adjustments to the definition would you make?

‘Gender identity’ should not be included in this legislation. It is deeply unethical to encourage young and vulnerable people to believe it is possible to change sex, and this fraud should not be given the imprimatur of government. Too often these interventions are sought by those desperate to ‘trans the gay away’ and are in fact a very extreme conversion practice.

3. Do you agree with the proposed exceptions to the definition of conversion practices? If no, please explain why.

We do not agree that affirming a person’s gender identity should fall under an exception. Indeed, the ‘affirmation model’ currently being adopted by some health professionals and other providers is causing extreme harm to many young and vulnerable people. ‘Gender-affirming’ practices, including prescribing or encouraging the use of puberty blockers, breast binders, penis and testicle tuckers, cross-sex hormones, mastectomies, hysterectomies and various other so-called ‘sex change’ surgeries, should be banned for children and other vulnerable people, including those who have unresolved mental health issues.

4. Are there practices not covered by these exceptions that should be? If so, please provide some examples.

There needs to be an exception made for people acting on beliefs based on science and rationality. At present, sensible left-wing lesbian and feminist women (derisively referred to as TERFs) are having their voices censored by the media and risk loss of their careers and livelihoods when they do speak out to warn those contemplating harmful ‘sex-change’ interventions. If this legislation passes these women may additionally be at risk of legal action against them.

If the government passes legislation that constrains health practitioners, teachers, parents and other concerned members of the community from questioning the wisdom of gender affirming interventions, they will be acting in breach of their duty of care to the many young and vulnerable people who will inevitably submit to these widely promoted practices.

Hormonal and surgical interventions undertaken with the intention of blocking natural puberty and mimicking the secondary sex characteristics of the opposite sex result in significant long-term harm, with infertility and/or sterility a likely outcome.

In view of the steadily increasing number of ‘detransitioners’ now speaking out, it is foreseeable that many individuals will regret these harmful interventions and ask why no one warned them or stopped them from proceeding.

Should the government pass this legislation they will be complicit in immeasurable harm to a generation of young and vulnerable people, many of whom are gay or lesbian, autistic, suffering from histories of trauma or have other unresolved mental health issues.

5. Are there any practices captured by these exceptions that should not be? If so, please provide some examples.

By providing an explicit exception for gender affirming practices, the government is giving its imprimatur to the fraudulent sex change industry. Aside from the irreversible effects of puberty blockers, hormones and surgeries, even the use of binders and tuckers is physically and psychologically harmful, particularly to children. It is the relentless promotion of gender ideology through our media, education and health systems that should be stopped, rather than being given legislative approval.

It is also bizarre that religious beliefs or practices should attract an exception, while beliefs and practices based in science do not. Indeed, including an exception for the churches would seem to negate the very purpose of the legislation since they have been undoubtedly the principal culprits of conversion practices in relation to sexual orientation.

6. Are there any practices where you are unsure whether they would fall under this exception?

If legislation is passed in NSW that resembles the law currently in place in Victoria, it will be necessary to warn health practitioners, teachers, counsellors, parents and others against questioning the wisdom of 'gender affirming' or sex change procedures. This law will definitely create an uncertainty as to whether they may risk being accused of 'conversion practices' if they openly express their reservations. This will mean that vulnerable individuals will be unable to access any alternative advice or treatment approach other than 'gender affirming' medicalisation.

7. Are there any practices where you are unsure whether they would have a primary purpose of changing or suppressing an individual's sexual orientation or gender identity?

Will feminists and women's services be prosecuted if staff fail to 'affirm' gender identities? Will feminists risk not only being sacked, censored, ostracised, defunded and sued but also fined and imprisoned if they continue to speak out questioning the concept of gender identity and its conflation with biological sex? Will the likes of Germaine Greer, Sheila Jeffreys, Drew Hutton, Clive Hamilton and other public intellectuals put their liberty at risk if they question extreme gender ideology? Will articles by scientists, like Richard Dawkins, be banned because they talk about chromosomes and the binary and immutable nature of sex? Will it be compulsory to include pronouns in your signature block and use the preferred pronouns of others under threat of legal action if you fail to affirm the chosen gender identity of a colleague or employee?

8. Do you agree with the proposed conduct element for the offence which requires that a reasonable person would consider the conduct is likely to cause harm?

Reasonable persons are increasingly thin on the ground. Perhaps because a reasonable person often still needs to earn an income and keep their job and friends. The idea that it is possible to change sex was considered ridiculous just a short time ago, but now the NSW government is contemplating not only endorsing it but prosecuting those who question it.

A society that has been subjected to relentless propaganda from government, corporations and a heavily controlled media struggles to make reasonable judgements. Reasonable persons have gone along with atrocities throughout history from foot binding to witch burning. In future people will puzzle how the NSW government came to contemplate legislation legitimising this global Skoptsy cult.

9. If no, what amendments should be made to the conduct element instead or in addition to what is proposed?

The NSW Government should not disgrace itself further by emulating the irrational and draconian legislation passed in Victoria. No reasonable person test can save it. To quote JK Rowling:

Dress however you please. Call yourself whatever you like. Sleep with any consenting adult who'll have you. Live your best life in peace and security. But force women out of their jobs for stating that sex is real?

The proposed legislation fails to draw a necessary distinction between sexual orientation and gender identity. It is acknowledged that gay, lesbian and bisexual people have historically been subjected to harmful conversion practices which is the proper subject of this proposed legislation. In this regard this legislation requires that people desist from attempting to change an individual's sexual orientation.

However, gender identity and gender expression, are attributes that have not and cannot be clearly defined. In the absence of an unambiguous legal understanding of gender identity and gender expression, how can the law formulate a reasonable person test for conduct that supposedly attempts to 'change' these attributes. Rather than requiring people to desist from trying to change an attribute, the proposed law requires that people actively affirm or, if they are health professionals, facilitate drastic physical changes.

For example, a reasonable person (whether parent, teacher, health professional or friend) would resist endorsing the removal of a teenage girl's healthy breasts. However, the proposed legislation requires the reasonable person to deny that instinctive reaction and instead entertain the notion that not supporting such drastic measures could be 'harmful conduct'. We are expected to accept that protecting an undefined and endlessly fluid attribute can justify a harmful and irreversible physical intervention. Any legislation that claims to address gender identity conversion practices can have no sound legal basis, either in terms of definitional clarity or public understanding.

10. Do you support the extraterritorial application of the offence?

We do not support the extraterritorial application of the offence and believe it is likely to offend the principles set out by the High Court in *Burns v Corbett*. Section 8 of the Victorian legislation purports to give the Commission and VCAT jurisdiction to determine matters between residents of different states. This is a jurisdiction specifically reserved under Article 75(iv) of the Australian Constitution. NSW should not contemplate emulating Victoria by passing legislation which is clearly unconstitutional.

11. Do you support the proposed mental element?

It makes more sense than strict liability. However, if a friend or parent intentionally attempts to dissuade a child from taking hormones or having surgeries, will they be committing an offence? If a health practitioner advocates against medical interventions and instead suggests a 'watchful waiting' approach, will they be at risk of prosecution?

12. What would you consider to be 'intention' to change or suppress the sexual orientation, gender identity or gender expression of a person?

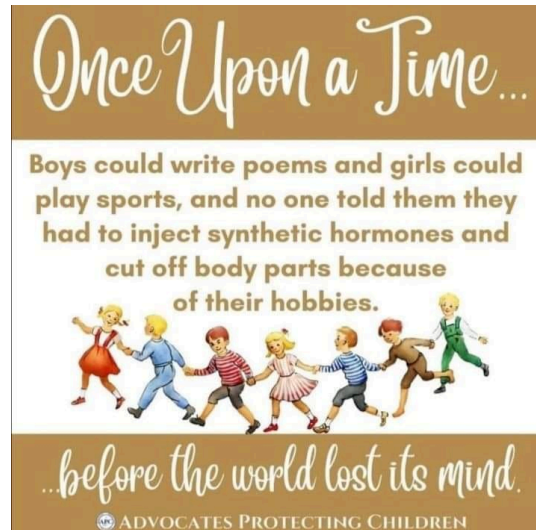
It is difficult to explain this legislation to members of the public because of the doublespeak involved. The use of positive language, such as 'gender affirming care', deliberately obfuscates the reality of halting normal development, removing healthy body parts and committing the individual involved to a lifetime of dependence on wrong sex hormones. Not to mention the many other adverse effects of such interventions on overall health and wellbeing.

Encouraging a young or vulnerable person to undergo medical and/or surgical interventions to 'change sex' should be regarded as a conversion practice and should be unlawful. However, the legislation instead indicates that an individual will be guilty of a conversion practice if they advocate against 'transitioning'. The proposed law may impute an 'intention' to change or suppress the 'gender identity' or 'gender expression' of an individual if a health professional, teacher or parent suggests a less drastic approach.

'Gender expression' is endlessly variable and fickle, and is based on oppressive sex stereotypes that feminists have worked to challenge over generations. How will the law determine it has been intentionally changed or suppressed in an individual when it has no specific, immutable character?

As feminists we are strongly opposed to constraints being placed on an individual's 'gender expression'. For example, if a girl or woman wishes to dress in what is regarded as stereotypically masculine attire, we do not approve of a teacher, employer or service provider making an objection. On the other hand, we believe existing discrimination laws are adequate to prevent the worst excesses in this regard. Should a woman be compelled by her employer to wear heels and lipstick, or a man is refused permission to wear a dress to work, this would arguably provide grounds for a sex discrimination claim.

We think a public education campaign would be more effective at addressing these issues without the dire unintended consequences. Retail stores, schools and media outlets throughout the country are still responsible for constraining free gender expression by applying oppressive stereotypes when determining what constitutes male and female attire, fashion, toys, hobbies and interests. Unfortunately, extreme trans activism has only further contributed to this trend, as summed up in the following memes.



13. Are there any practices where you are unsure whether there would be an intention to change or suppress the sexual orientation, gender identity or gender expression of a person?

Yes, for example is the 'watchful waiting' approach adopted by some health practitioners likely to see them accused of a conversion practice for not prescribing puberty blockers or cross-sex hormones?

If a parent or teacher refuses to address a child using their name and pronouns of choice, are they committing an offence under this legislation?

14. Should taking or arranging to take a person from NSW for the purposes of conversion practices be a criminal offence?

No, certainly not in the context where parents want to obtain help for a confused child who is otherwise in the clutches of those advocating the use of sterilising hormones and surgeries.

15. Should engaging a person outside of NSW to provide or deliver conversion practices on a person in NSW be a criminal offence?

No, for the reason set out above. This is dangerous legislation. It will support the extensive use of medical and surgical interventions that are not evidence based and are under increased scrutiny in several European and American jurisdictions. Parents must be able to access support from those not in the thrall of gender identity ideology.

16. Should the civil prohibition apply to providing or delivering conversion practices, wherever they occur?

Australian jurisdictions are lagging behind the latest international developments in relation to the treatment of gender identity related issues. In the United Kingdom and several Scandinavian countries, public health authorities are adopting a more conservative approach to the management of individuals identified as gender dysphoric, particularly children and young people. Medical interventions are only offered as part of supervised clinical trials, acknowledging that the evidence base for routine medical and surgical transition is very weak. Some US states have banned such interventions for minors.

Until NSW parliamentarians get up to speed with these developments they should exercise extreme caution when considering regulation of those caring for individuals identified as gender dysphoria. ‘Gender dysphoria’ in women and girls is an understandable response to the pressures and constraints imposed by oppressive sex stereotypes and should not be met with recommendations for hormones and surgery.

17. Should conversion practices be defined consistently across criminal and civil law?

While parliamentarians remain confused about the concept of gender identity, it would be safest if they do not legislate in this area at all. Unfortunately, the proposed bans on gay conversion practices are being used as a trojan horse designed to irrevocably install extreme gender ideology in our communities. These laws pose a significant risk to the well-being of those who do not conform to sex stereotypical behaviour, for a range of reasons.

18. What, if any, changes should there be to the ADNSW complaints process to deal with conversion practices complaints? For example, are changes needed to
a) who should be able to bring a complaint
b) powers available to deal with complaints, including the discretion to decline a complaint where the conduct occurred more than 12 months ago
c) the role of the NSW Civil and Administrative Tribunal, including how a complaint is substantiated and the orders it may make?

The NSW Government should not emulate the Victorian legislation, which gives the Victorian Human Rights Commission alarming powers of compulsion as part of its investigatory functions (section 36, 37, 38). It also gives the Commission capacity to conduct proceedings in secret (section 41) and potentially in disregard for principles of natural justice (section 35). The unfettered power to ‘take any action it considers fit’ under section 42 would establish the Victorian Commission as a menacing star chamber with extraterritorial reach.

Meanwhile, it is VCAT, and not a court, that has power to review the Commission's decisions (section 45) and enforce its orders (section 46). Indeed, the secrecy provisions and the restrictions placed on disclosure of information to a court (section 51 and 52) seem to hamper any recourse to the civil court system.

We are concerned that the changes in mind for ADNSW are similarly motivated by a desire to establish it as an unaccountable advocate for gender identity ideology. There needs to be an extensive and public consultation when the text of this legislation, or that proposed by Alex Greenwich, is available.

19. Should complaints be able to be referred to other bodies?

Referrals may be appropriate in certain cases, for example, if a health practitioner has acted unethically. However, in view of the extensive manipulation of our regulatory systems by those advancing fraudulent gender ideology, transparency is paramount. There must be greater public scrutiny of actions taken by government agencies. Currently, the Health Care Complaints Commission is refusing to release information about the number of complaints relating to 'gender identity' matters or how those complaints have been managed. Disciplinary complaints are being used to shut down dissent by health professionals and others who dare to speak up.

20. Should a civil complaint process be available where a matter is being investigated by police, or criminal proceedings are ongoing?

If there has been an offence committed, it is not unusual for both civil and criminal remedies to be pursued. However, the government needs to exercise extreme caution and refuse to criminalise activity that is in the public interest and acting as a curb on unscrupulous and exploitative conduct. Health professionals who exercise careful, non-invasive management of those expressing confusion about their sex should not be penalised. Unquestioning adoption of the affirmation model will lead to many more vulnerable individuals being exposed to medical and surgical interventions which are experimental in nature rather than evidence based. Government should be bracing itself for the flood of litigation arising from this global medical scandal, rather than instituting new complaint processes that are likely to be used to further shut down whistle blowers.

21. Should the Anti-Discrimination Board's general functions be adapted to enable it to address systemic concerns about conversion practices?

Please see concerns expressed above. Defining conversion practices to include activity that is in fact protective and necessary for the safeguarding of women, children and other vulnerable people will result in legislation that should itself be unlawful. The powers of the Anti-Discrimination Board should not be increased while it is beholden to dangerous and irrational gender ideology.

22. What other issues should be considered in the development of a civil response scheme

The issues discussed above must be resolved before any further progress is made with this legislation. Conversion practices in relation to sexual orientation cannot be considered without clear recognition that the 'sex change' industry is itself peddling

conversion practices and should not be receiving protection and promotion in legislation that purports to be for the benefit of the gay and lesbian community.

23. Does the existing professional regulation framework provide sufficient coverage for conversion practices performed by health professionals? If no, what amendments are required?

No, it does not. It specifically exempts health professionals actively engaged in encouraging non-conforming children and other vulnerable people to undergo interventions which are in themselves extreme conversion practices. If 'gender identity' is included within its ambit, this legislation will do far more to harm than help the gay and lesbian communities. The legislation should narrow its focus to sexual orientation only or be amended to explicitly ban gender affirming medical and surgical interventions.

24. Do you support a delayed commencement period?

It should not commence at all while it contains mention of gender identity.

25. What implementation actions should be prioritised during this period to support the commencement of legislation

There is an urgent need to ban gender affirming medical and surgical interventions for children and other young and vulnerable individuals. That should be the government's top priority.

Yours faithfully



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Feminist Legal Clinic Inc.
Organization in Special Consultative Status with the Economic and Social Council (ECOSOC) since 2023.