AUSTRALIAN FEMINISTS FOR WOMEN'S RIGHTS

Submission to the NSW Government Consultation: Banning LGBTQ+ Conversion Practices

Australian Feminists for Women's Rights (AF4WR) is a feminist group whose object is research-based advocacy on women and girl's sex-based rights.

We have been provided with a copy of the Consultation Paper prepared by the NSW Department of Community and Justice, and NSW Health, into the Government's proposed ban on conversion practices. We are concerned at the lack of public consultation on this important matter. The targeted consultation being conducted by the Government means the voices of many women, gay and lesbian citizens, and concerned parents are in danger of being sidelined.

We respectfully request the following submission be considered alongside other submissions as part of the consultation process.

AF4WR supports banning gay and lesbian conversion therapy. Our concerns relate to extending this ban to therapeutic interventions around the contested notion of gender identity, as outlined below.

Specific responses to questions raised in the consultation paper

1. Legislative Definition of 'Conversion Practices'

Q 1 Do you agree with the proposed definition of conversion practices?
Q 2. If no, what amendments or adjustments to the definition would you make?

AF4WR strongly disagrees with the proposed definition for the fundamental reason that the definition, and the entire consultation paper, consistently and wrongly conflate gay or lesbian sexual orientation with the completely separate and contested notion of gender identity. They are not the same thing. Any legislation that treats sexual orientation, which relates to the sexual attraction one human being of either sex feels for another, of either sex, as comparable with a fluid =sense of 'gender' based on sexist stereotypes (as made clear in the DSM-V definition of 'gender dysphoria'), will be flawed from the outset.

The US Diagnostic and Statistical Manual's 5th edition (DSM-V) is the world's most influential document in informing therapeutic approaches for gender-confused children: among other things, it is the fundamental reference used by Australian 'gender clinics'. The majority of criteria DSM-V lists for a diagnosis of 'gender dysphoria' are based on the very

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same outmoded sexist stereotypes that the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) identifies as contributing significantly to the subordination of women (CEDAW, 1979, Articles 5 and 10).

AF4WR notes that gay conversion practices have long been discredited, and there is little to no evidence of it still being practised in NSW. That said, we support a ban on practices that are specifically intended to convert gay, lesbian and bisexual people away from their sexual orientation and that are intended to cause physical or psychological harm.

We do *not* support a ban on conversion practices based on gender identity. There is no evidence of the existence of a fixed, immutable gender identity in individuals. In most cases, we are dealing with gender-confused children who are exploring their identity, may be experiencing feelings of discomfort with their body as they go through puberty, and may also be coming to terms with their same-sex attraction. Many of these children are gender non-conforming: that is, boys who exhibit what are stereotypically considered 'feminine' behavioural traits and vice versa.

These children and young people need time, love and support as they learn to understand and accept themselves in their own bodies. For most children and their parents or carers, this will mean counselling as a first step. Under the proposed draft legislation, we are concerned that the proposed formulation of *'practices directed to a person on the basis of their … gender identity'* is so broad, it could be taken to mean providing counselling or mental health care to a gender-confused child that does not immediately 'affirm' her or his gender identity.

A range of research has shown that human brain maturity, notably cognitive control over emotional responses, is not reached until well into the twenties, and adolescents can be highly influenceable, notably as concerns peer-group acceptance and reward-driven behaviour. This knowledge has informed many current laws concerning children and adolescents, such as the legal ages for driving, voting, sexual consent and even getting a tattoo. In Scotland, the criminal justice system has even factored this information into the development of new sentencing guidelines, based on research commissioned from the University of Edinburgh.

Our strong view is thus that the proposed legislation should apply only to practices intended to change or suppress a person's sexual orientation. Gender identity should be removed from the proposed legislation for the reasons outlined both above and in further answers below.

Q3. Do you agree with the proposed exceptions to the definition of conversion practices? If no, please explain why.

AF4WR does not agree with the first two proposed exceptions to the definition as they relate to practices that affirm a person's gender identity.

Affirming a person's sexual orientation requires no action beyond stating acceptance of that person's sexuality. However, affirming a person's gender identity is not a neutral act but requires action, much of which could be of long-term harm to a child or young person. At the very least it requires changing the way a child is referred to, the way she or he presents socially, and, in an education setting, allowing male students into female spaces and vice versa. 'Social transition' is nearly always followed by medical intervention including the use of puberty blockers and cross-sex hormones, the harmful effects of which we discuss below.

Studies have shown that under the 'watchful waiting' model of care, between 80 and 90 percent of children claiming a transgender identity will eventually accept themselves as their own sex. Many will be gay or lesbian. By rushing to an affirmation-first approach, this legislation will have the effect of 'transing away the gay': in other words, will enforce a form of gay conversion therapy on gender-confused children. It is a retrogressive step, and runs directly counter to the stated intent of the proposed legislation.

Q4. Are there practices not covered by these exceptions that should be? If so, please provide some examples.

Holistic mental and physical health care that seeks to understand the causes of gender-confusion and distress in children and young people should be the basis of all care and all practices directed at them. Talking therapies and watchful waiting should not only be considered exceptions but should be the requisite standard of care rather than immediate 'gender affirmation.'

It is becoming clearer over time that a vast number of young people, particularly young girls, presenting with gender confusion often have at least one other comorbidity: for example, autism or eating disorders, or even trauma associated with experience of sexual violence. These conditions need to be examined and addressed before any move into sending these children down the path of lifelong medicalisation via gender-affirming care. (See for example the Westmead reports linked in 'Sources and further reading'.)

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2. Criminal Law Responses

Q8. 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?
Q9. If no, what amendments should be made to the conduct element instead or in addition to what is proposed?
Q10. Do you support the extraterritorial application of the offence?

AF4WR is gravely concerned that this legislation will criminalise parents, carers, educators and healthcare providers who attempt to merely talk to children and young people about alternatives to so-called 'gender-affirming medicine'. The proposed legislation would have the effect of enabling prosecution of any NSW resident both within NSW and outside NSW for attempting to organise counselling or observe watchful waiting, as these would now be considered 'conversion practices' away from a transgender identity.

This is a dangerous legislative overreach. It would be disastrous for the long-term health and wellbeing of children who are being rushed into life-altering medical treatments. It is a denial of freedom of conscience and freedom of expression and an intrusion into the rights of parents and carers.

We note the proposal that religious beliefs are exempted in the form of prayer. It is our position that belief in a 'gender identity' is something that should not be enshrined in law, and that *any* parents and community members who do not believe in gender identity should be free to express that view and act accordingly.

Q11. Do you support the proposed mental element?
Q12. What would you consider to be 'intention' to change or suppress the sexual orientation, gender identity or gender expression of a person?
Q13. 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?

The proposal outlined in the consultation paper is that 'the offence requires an intention to change or suppress the sexual orientation or gender identity of the person the practices are directed against.' AF4WR does not support this proposal in regard to 'gender-affirming' care as this 'care' actually risks *worsening* the person's physical and mental health. The largest longitudinal study conducted to date (1972-2017), at the world's first 'gender clinic' in Amsterdam, found that those using the clinic had *a higher suicide risk* than the general population *at every stage of transition*, and recommended that future research consider carefully the *role of comorbidities* in heightening suicide risk. A growing number of

detransitioners are also testifying about the devasting impact of being rushed into transition at a young age: see further information below.

Q14. Should taking or arranging to take a person from NSW for the purposes of conversion practices be a criminal offence?
Q15. Should engaging a person outside of NSW to provide or deliver conversion practices on a person in NSW be a criminal offence?

No in both cases in regard to gender identity. Parents and carers have a duty of care toward their children and are almost always the best people to make decisions about their child's welfare. Criminalising parents for seeking the best support and care for their child, wherever that care may be located, should never be considered.

3. Civil Law Responses

Questions 16-22

AF4WR's answers to the questions regarding civil law responses mirror those provided in the above criminal law responses. Sexual orientation and gender identity need to be separated under the law and not treated as comparable. Seeking alternative and appropriate support for gender-confused children beyond the affirmation-only model should not be a civil offence and should not attract any form of sanction from the state.

Regulation of Health Practitioners and Health Service Providers

Q23. Does the existing professional regulation framework provide sufficient coverage for conversion practices performed by health professionals? If no, what amendments are required?

AF4WR submits that no amplification of the existing framework is required. Instead, consideration needs to be given to enhancing protections for health professionals who offer alternative forms of health care and support beyond the affirmation model for gender confusion, to ensure this legislation does not have a chilling effect on their ability to provide appropriate care.

Supporting Non-Legislative Actions

24. Do you support a delayed commencement period?
25. What implementation actions should be prioritised during this period to support the commencement of legislation?

AF4WR does not support the commencement of this legislation as it currently stands. The bill needs to clearly address conversion practices aimed at lesbian, gay and bisexual people and draw a clear distinction between sexual orientation and 'gender identity'.

Instead, AF4WR urges the NSW Government to consider recent developments in the UK, Sweden, Denmark and Finland where the affirmation-only model of care for gender-confused children is no longer the default. We call on the NSW Government to conduct a full review of the current treatment practices for gender-confusion in NSW, including:

- the evidence base (or lack thereof) for the use of puberty blockers
- the use of the affirmation model as the preferred care model when evidence suggests gender-confused children present with a variety of comorbidities
- the teaching of 'gender identity' in NSW schools and its impact on the rapid increase in the number of teenagers and young children claiming a transgender identity.

Other issues of concern

There is little discussion in the consultation about the realities of gender affirming care, beside a passing reference at paragraph 3.9. AF4WR submits that this lack of discussion glosses over the real and profoundly negative impacts of so-called gender affirmation medicine, particularly on children and young people.

Puberty blockers

There has been very little research into the long-term physical effects of puberty blockers. Puberty blockers are gonadotropin-releasing hormone (GnRH) agonists or analogues and are used to suppress puberty in adolescents whose hormone levels would otherwise be perfectly normal. GnRH are sex hormone suppressants, already in use to treat some cancers such as prostate or breast cancer. They go by a variety of brand names, one of the most common of which is Lupron. Their use as puberty blockers is not formally approved by any drug administration authority (including the TGA in Australia): they are thus used 'off-label'.

A number of studies have associated the use of these drugs with reduction in bone density as well as decrease in white matter integrity in the brain. These effects are exacerbated when used on pre-pubescent children.

We note:

- In July 2022 the US Federal Drug Administration issued a new warning on GnRH agonists which may cause *pseudotumor cerebri* (idiopathic intracranial hypertension), resulting in loss of vision.
- The Cass Review in the United Kingdom found there were gaps in the evidence on the use of puberty blockers and limited research on the sexual, cognitive and developmental outcomes on children.
- In 2020 the National Institute for Care and Health Excellence (NICE) in the UK reviewed the available evidence for puberty blockers and ranked the standard of evidence as 'very low' in every category.

Cross-sex hormones

Once prescribed, the use of puberty blockers almost always leads to cross-sex hormones which have long-term health impacts. Combining the use of puberty blockers and cross-sex hormones results in a variety of later complications: permanent facial hair, deepening of voice and vaginal atrophy for girls and women, unusual and early stage osteoporosis for boys and men, and permanent sterility for both sexes.

'Gender-affirming' surgery

The language used around 'gender-affirming' surgery obscures the reality of what is actually happening.

'Top surgery' for trans-identifying females means an elective double mastectomy and carries the same risks as any other major surgery. 'Bottom surgery' for trans-identifying males means the removal of the penis and testicles and the creation of a fake vagina, which will need to be dilated daily for the rest of their lives. It is castration under another name. 'Bottom surgery' for trans-identifying females means the removal of skin and fat from the forearm to create a fake penis, which does not resemble a real penis and needs to be 'inflated'.

There is strong evidence that 'socially transitioning' children and adolescents, whose brain development is far from complete as we noted above, almost always results in some form of medical or surgical intervention. AF4WR firmly believes that children and teenagers do not have the ability to understand the possible life-long implications of their desire to 'transition' and should not be rushed into possibly disastrous courses of action.

Detransitioners

A number of detransitioners have testified to the harm of puberty blockers, cross-sex hormones and surgery, and even some well-known transgender personalities such as Buck Angel have attested to them in an attempt to alert to and prevent the harms caused. Detransitioners are increasingly initiating legal action against their gender-care providers on the basis that they were not able to fully consent and were not warned of the reality of their treatment (see for example the Keira Bell case in the UK).

Sources and further reading

The Cass Review into gender identity services (GIDS) for children and young people. https://cass.independent-review.uk/

The Tavistock Clinic in England was forced to close as a result of the review. Up to 1000 families are now considering suing the clinic. https://www.medscape.co.uk/viewarticle/1000-families-sue-tavistock-gender-service-2022a10021ac

Many Australian health care workers have called for a similar review here

https://www.theaustralian.com.au/science/calls-to-review-transgender-treatment-for-kids-after-british-tavistock-clinic-is-closed/news-story/2b826d34b5d11063cf541885ebcd7bbc?amp

A study published in the *British Medical Journal* found puberty blockers did not alleviate negative thoughts in children with gender dysphoria https://www.bmj.com/content/372/bmj.n356

Westmead Children's Hospital papers (2021, 2023): https://journals.sagepub.com/doi/10.1177/26344041211010777
https://www.mdpi.com/2227-9067/10/2/314

This Healthline article outlines some of the concerns about the lack of research on the effects of puberty blockers:

https://www.healthline.com/health/are-puberty-blockers-reversible#short-answer

Keira Bell, a young female de-transitioner, sued the Tavistock clinic in a landmark case. https://www.persuasion.community/p/keira-bell-my-story

Courney Coulson is an Australian female detransitioner who was interviewed in July 2023 by 4 Corners. https://www.youtube.com/c/CourtneyCoulson

Chloe Cole is a female detransitioner in the USA who has given evidence to the House of Representatives about how transitioning ruined her childhood https://www.youtube.com/watch?v=DSGgR3W_jjg

Professor Dianna Kenny is an Australian psychologist and psychotherapist who has raised serious concerns about gender affirming care. https://diannakenny.com.au/blog/

Read Dr Lisa Littman's paper on Rapid Onset Gender Dysphoria.https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0202330

In Sweden, gender dysphoria diagnoses in teenagers have increased by 1500% https://www.theguardian.com/society/2020/feb/22/ssweden-teenage-transgender-row-dysphoria-diagnoses-soar

Sweden has since 'put brakes on treatments for trans children'

https://www.france24.com/en/live-news/20230208-sweden-puts-brakes-on-treatments-for-trans-minors

'Clinical and Ethical Considerations in the Treatment of Gender Dysphoric Children and Adolescents: When Doing Less Is Helping More.' *Journal of Infant, Child, and Adolescent Psychotherapy* 20(4): 439–449. https://doi.org/10.1080/15289168.2021.1997344

GenderHQ explores why so many young females are identifying as transgender https://www.genderhq.org/increase-trans-females-nonbinary-dysphoria

Gender clinician admits the evidence for gender affirming care is weak

https://www.genderclinicnews.com/p/yes-our-evidence-is-weak

There is growing evidence that puberty blockers can alter the normal trajectory for psychosexual development.

https://can-sg.org/frequently-asked-questions/how-do-the-endocrine-interventions-puberty-blockers-and-cross-sex-hormones-work/

Detransitioners are raising awareness of the issue: https://www.detransawareness.org/