28 January 2021

Tasmania Law Reform Institute (**TLRI**)
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Dear members of the TLRI,

COMMUNITY CONSULTATION: CONVERSION PRACTICES: LAW REFORM OPTIONS FOR TASMANIA

1. We refer to the TLRI's current inquiry about the appropriate law reform options for Tasmania in respect of sexual orientation and gender identity (**SOGI**) conversion practices. We thank the TLRI for the opportunity to provide submissions in response to the Questions outlined in Issues Paper No 31 dated November 2020 prepared by the TLRI (**Issues Paper**).

2. In response to the matters outlined on page x of the Issues Paper, we confirm that we would like our submission to be treated as a public submission.

3. The Human Rights Law Alliance (**HRLA**) is Australia's only religious freedom law firm that specialises in the areas of freedom of thought, speech, and conscience. We regularly have carriage of matters which involve the provision of advice in respect of existing and proposed legislation across Australia regarding SOGI conversion practices.

SUMMARY

4. Broadly, HRLA does not support reforms to Tasmanian law in respect of SOGI conversion practices. In our experience, such reforms are generally designed to address perceived problems regarding non-consensual practices such as coercive and aversive therapies (such as shock treatments, lobotomies and chemical castration). To be clear, HRLA does not support the use of such non-consensual coercive and aversive practices in any way. However, there is no evidence that these sorts of practices are actually still occurring today in any Australian jurisdiction, so legislation to address such a problem is unnecessary.

5. Further, legislation introduced across Australia in response to this perceived problem is generally far too broad and wide-reaching, and includes very vague and unclear definitions for relevant terms. Such legislation will have many unintended consequences in terms of religious freedoms, and also impact on other fundamental rights including for example in respect of parents' rights in respect of their families and the moral education of children. It may also be ideologically motivated, and disproportionately target people or organisations with traditional sexual views.

6. With respect to the Questions in the Issues Paper, we summarise our submissions as follows:

6.1. **Question 1:** The working definition adopted by TLRI in respect of SOGI conversion practices is far too broad and wide-reaching. It would extend to virtually any activity, not just professional or therapeutic services. Any act or statement which is non-affirming or potentially seeks to change or suppress a SOGI could be criminal. This would lead to absurd outcomes and potentially criminalise a broad range of unintentional and conscience-based conduct. It may also limit the options for assistance and counsel for people experiencing SOGI issues as health professionals take a risk-averse approach in offering services. The definition would also lead to uncertainty and make it nearly impossible to draw clear lines between acceptable and criminal practices. In our view, a definition of SOGI conversion practices should be limited to *only* non-consensual coercive and aversive practices.

6.2. **Question 2:** There is no justification to modify the existing principles in relation to the ability of competent adults to provide consent on their own behalf and on behalf of others (such as minors or impaired persons), or in respect of the ability of mature minors to consent. The only exception is coercive and aversive treatments, which are physically abusive. People should therefore be allowed to consent to SOGI conversion practices (as broadly defined by the TLRI) except in respect of such coercive and aversive treatments.

6.3. **Question 3:** There is no evidence to suggest that any coercive or aversive conversion practices are currently occurring within Tasmania (or indeed, within Australia at all) today. HRLA is not aware of any information to the contrary. There are no scientific studies which evidence such practices. The potential evidence cited by the Issues Report is a 2018 Report which is of very limited probative and evidential value. For example, it seeks to draw unfounded conclusions based only on international comparators with no direct relevance to Australia and broad assumptions about demographic and religious statistics. It also cites unbalanced anecdotal evidence from a sample size of just 15 people, none of whom provided any evidence of coercive practices except for one potential aversive practice which occurred decades ago in the 1980's. As such, legislation to address any perceived current problem regarding aversive or coercive conversion practices is unnecessary.

6.4. **Question 4:** HRLA does not support any reforms to Tasmanian law (whether by comprehensive reform, amendment or a hybrid approach) in respect of SOGI conversion practices. If any legislation is introduced, it should be very carefully drafted to *only* apply to coercive and aversive therapies. However, in our view such reform is ultimately unnecessary, given that existing laws would already cover the sorts of physical abuse involved in such treatments and because there is no evidence that such treatments are currently occurring within Australia. HRLA does not support any reforms which cover any broader scope, given that this may impinge on fundamental and religious freedoms and unnecessarily seek to modify existing principles in respect of lawful consent.

6.5. **Question 5:** Only coercive and aversive conversion practices should potentially be criminalised in Tasmania. However, we consider that unnecessary ultimately given the scope of existing laws and a lack of evidence that any such activities are currently occurring in Australia. Any criminalisation or penalty provisions which are introduced should be linked

to the severity of the crime and reflect existing criminal provisions and offences. Any broader scope of SOGI conversion practices should not be criminalised in Tasmania.

6.6. **Question 6:** Only coercive and aversive conversion practices should potentially be made civil wrongs in Tasmania, and only if such practices are also criminalised. Again, we consider this unnecessary given the scope of existing laws and a lack of evidence that any such activities are currently occurring in Australia. If new provisions are introduced, only non-consensual practices should be made the subject of liability and compensable according to existing principles. Any broader scope of SOGI conversion practices should not be criminalised in Tasmania.

6.7. **Question 7:** Other existing Tasmanian laws should not be amended to cover SOGI conversion practices, including laws in respect of consumer protection and advertising. There is no evidence that any coercive or aversive conversion therapies are occurring and no justifiable need for such reform. Again, we also do not support any other amendments which target a broader definition of SOGI conversion practices.

6.8. **Question 8:** As HRLA does not support the proposed law reform, we also do not recommend any other models or approaches to complement any change in the law. If introduced, such complementary changes could encourage activism and weaponization of the legislative regime against churches, schools, organisations and individuals. Such alternative models or approaches should only possibly be considered as an alternative to introducing legislation and even then only if they are focussed on the identification of coercive or aversive conversion therapies.

6.9. **Question 9:** The Issues Paper does not properly deal with the impact of the proposed legislative changes on fundamental rights and religious freedoms. Because of its apparent overreach, the proposed changes would likely infringe on fundamental rights and freedoms under international law. The proposed changes would be inconsistent with various Articles of the *International Covenant on Civil and Political Rights* (**ICCPR**). The far-reaching effects of the proposed changes are disproportionate to the harms that any such legislation seeks to prevent. It would place unjustifiable limits on fundamental rights and freedoms that are completely unnecessary to achieve whatever legitimate aims such legislation might have.

The current proposed definitions are also poorly designed and fail to meet basic principles of good legislative design. They violate fundamental principles of good legal drafting. For example, the proposed definitions extend criminal sanction far beyond what is necessary to prohibit coercive and aversion practices, are vague and ambiguous and may criminalise conduct which is not wilful or deliberate. Giving these failings, it is likely that any legislation which is introduced according to the current proposal may not achieve its goals, will give rise to significant unintended consequences and is likely to impose unnecessary costs. For these reasons, the proposed changes would be bad law and should be rejected.

DISCUSSION

7. For the purposes of our submissions, we have addressed below the nine Questions outlined in the Issues Paper in the same order.

Question 1: ***"After considering the background and working definition (see [1.3.23] on page 13), in your opinion, what are and are not 'sexual orientation and gender identity conversion practices'? (See [1.3.27] on page 14 for possible considerations)."***

8. We note that the TLRI has adopted the following working definition of SOGI conversion practices:

> **Sexual orientation and gender identity (SOGI) conversion practices means**:
>
> (a) acts or statements;
>
> (b) that are aimed at changing, suppressing, or eradicating the sexual orientation or gender identity of another person; and
>
> (c) are based on a claim, assertion or notion that non-conforming sexual orientation or gender identity is a physical or psychological dysfunction that can be suppressed or changed.

9. This working definition is far too broad and wide-reaching. It would essentially cover anything aimed at changing, suppressing or eradicating the SOGI of another person, including any act or statement. This is also only exacerbated by the broad and vague nature of terms such as "gender identity" and "sexual orientation". It wouldn't just ban forced coercive or oppressive treatments for SOGI issues, such as electroshock therapy, but would extend much wider. The practical consequences of using the definition would be extensive. It would extend to virtually any activity, not just professional or therapeutic services. It would have implications for all sorts of other areas and people, including parents, pastors, teachers, schools, counsellors and health professionals.

10. For example, a religious leader who promotes abstinence to a teenager could be seen as potentially suppressing their sexual orientation. A health professional who supports parents to adopt a cautious "watchful waiting" approach could be suppressing that child's gender. Any teaching by teachers or schools to children of orthodox religious beliefs on sexual orientation or gender identity could be covered. Parents and guardians could also be prevented from providing moral and ethical teaching and formation of a child on SOGI issues. That such practices might risk jail time is absurd and highlights the shortcomings of using such broad definitions.

11. Using this working definition would likely also limit options for assistance and counsel for children experiencing SOGI issues. The definition would only protect controversial affirmation and transition practices. It is imprecise and unclear for any other treatment, including behavioural, psychological and religiously based counselling. Access to circumspect treatments (such as "watchful waiting" practices for gender dysphoria in young children) may become unavailable as at-risk health professionals withdraw or refuse those treatments. This would steer practitioners away from exploring a broad range of individual-focussed causes and treatments for sexual attraction and dysphoria and channel them towards exclusively promoting affirmation treatments and therapies. Many of these affirmation therapies involve invasive, harmful and often irreversible chemical and surgical interventions.

12. Using this working definition would also create uncertainty. It would prioritise a person's subjective and personal conceptions and experiences of SOGI. This means that any non-supportive practice could potentially be an attempt at suppression or change to sexuality or gender. Anyone who seeks to explore or recommend non-affirmative treatments could run the risk of criminal sanctions and jail time if such wide definitions are used. Any loving or well-intended practice that falls short of affirmation of sexuality and gender issues, such as encouraging a gender dysphoric person to love the body they were born with, could be criminal.

13. Such a definition would also make it nearly impossible to draw clear lines between what practices are acceptable and what practices are criminal. Laws, especially criminal laws, need to be precise and narrowly focussed in defining unacceptable conduct so that ordinary people can have certainty about whether or not their conduct is acceptable conduct or prohibited criminal behaviour. The proposed working definition falls far short of achieving that.

14. Any broad definition of SOGI conversion practices which refers to "acts or statements", or other things which are aimed at "changing, supressing or eradicating" a person's SOGI more generally, would have far too wide-reaching implications. Such broad and ambiguous terms should *not* be included in the definition. The "broadest" potential view of SOGI conversion practices enunciated on page 4 of the Issues Report is particularly inappropriate in this regard.

15. In response to the question posed by section 1.2.18 of the Issues Report, we consider that ideology should *not* be proscribed within Tasmanian law. An evidence-based approach should be used instead. It seems clear from the discussion on pages 5 to 8 of the Issues Report that a broad principles-based definition, such as TLRI's working definition, may be ideologically motivated rather than evidence-based. Section 1.3.25 in fact apparently acknowledges that there is an ideology underlying TLRI's working definition. It is clear from the substance of the definition that the underlying ideology rejects traditional and non-affirming approaches to SOGI issues. This is particularly inappropriate given the contested and experimental nature of affirming treatments. The broad principles-based definition should be rejected in favour of a prescriptive definition.

16. In our view, any definition adopted in respect of SOGI conversion practices should be limited to *only* non-consensual coercive and aversive practices, being those practices that use physical abuse, force or aversion techniques. It is apparently uncontroversial that such non-consensual practices should be condemned and outlawed. Any other practices should be excluded from the definition. In our view, the "narrowest" view of SOGI conversion practices enunciated on page 4 of the Issues Report is therefore an appropriate definition.

17. For clarity, in response to the considerations on page 14 of the Issues Report, we also confirm that removing a person from Tasmania for the purpose of SOGI conversion practices should not be included in any definition. This gives rise to numerous issues in respect of jurisdiction and enforcement and would be an overreach by the State in respect of matters occurring outside of its borders.

Question 2: "*Should people be allowed to consent to SOGI conversion practices? If so, at what age and under what conditions? (See [1.3.28] on page 14 for possible considerations).*"

18. As discussed above, we consider that the proposed definition of SOGI conversion practices is inappropriate as it is far too broad and could extend to virtually anything. It therefore covers all

sorts of statements and acts to which people should be able to consent. People should therefore be allowed to consent to SOGI conversion practices as defined by the TLRI working definition.

19. The only exception is in respect of any practices which are coercive or aversive (such as electroshock therapy) and therefore physically abusive. These coercive and aversive treatments are the only types of acts to which people potentially should not be able to consent.

20. Otherwise, there is no justification to modify the existing principles in relation to the ability of competent adults to generally consent on their own behalf and on behalf of others (such as minors under 18 years of age or others with decision-making impairments). There is also no justification to modify the existing principles in respect of the ability of mature minors to consent.

21. Any legislation which does not allow competent adults to consent to other matters (for themselves or on behalf of others) does not realistically balance the need to protect individuals from harm with the rights of others or a person's own rights of personal consent.

22. For example, it would be absurd and an imposition on fundamental rights if a competent adult struggling with unwanted sexual desires was not able to seek tailored professional or therapeutic advice which they consent to and may even specifically request or want to obtain.

23. Parents and guardians should also continue to retain the right to consent to appropriate treatments on behalf of minors. As discussed further below, the ICCPR provides several Articles which protect the rights of the family and children. The rights of parents and those who have the primary position of care for the wellbeing of children are of fundamental importance. A law which affects such rights must meet a very high threshold.

Question 3: ***"Have you been involved in or offered, or are you aware of, any forms of SOGI conversion practices in Tasmania? If so, what were the effects on you, or the person exposed to them? (See [2.3.5] on page 23 for possible considerations)."***

24. As discussed above, the definition of SOGI conversion practices adopted by TLRI is so broad that it could cover virtually anything, including any act or statement by a person which relates to SOGI issues. By this amorphously low standard, SOGI conversion practices could be potentially be occurring all across Tasmania, although the Issues Report indicates that this is unknown.

25. However, a more important measure is whether any *coercive or aversive practices* in respect of SOGI are occurring in Tasmania. The Issues Report itself acknowledges in section 2.3 that the TLRI is unaware of any SOGI conversion practices occurring in Tasmania and that no scientific studies have been published which evidence this. Section 3.2.2 also acknowledges that physical conversion therapy practices such as aversion therapy are reportedly extremely rare and possibly non-existent in Australia. HRLA is also of the view that, to our knowledge, no coercive or aversive practices currently occur in Tasmania (or indeed within Australia at all).

26. A 2018 Report of the Human Rights Law Centre (**HRLC**) is the only potential evidence cited by the Issues Report in this regard. However, we consider that the HRLC Report is of very limited probative value and does not provide any reliable evidence at all of any coercive or aversive practices currently occurring within Australia.

27. Importantly, the HRLC Report relies only on potential international comparators (which have no direct relevance to Australia) and assumptions about demographic statistics to cite a broad (and otherwise unfounded) estimate of how many Australians may potentially be exposed to conversion practices. These comparators and assumptions provide no evidence of any coercive or aversive practices actually currently occurring within Tasmania or Australia.

28. The TLRI also refers to the "testimony of survivor groups" in the HRLC Report. However, the HRLC Report only includes testimonies from 15 people, which is hardly a reliable sample size and clearly not any indicator of a systemic problem. Further, of those 15 people, only one was apparently subject to any form of aversion therapy, and this occurred in the 1980's so is no indicator of any current practice. The other participants were only subject to things such as Christian counselling, sermons, studies, prayers, church events and "ex-gay" culture in faith communities generally, and there is no suggestion that these things occurred without the consent of the individuals involved at the time.

29. The HRLC Report also does not consider any evidence from individuals who were exposed to such activities within faith communities or who experienced a change to their SOGI as a result of such exposure and view that experience positively. There is definitive evidence from members of the LGBT community who have benefitted from both religious and secular practices, counselling and therapies to deal with unwanted sexual attraction and gender dysphoria at the Free to Change website here which documents many LGBT Australians' experience of change and benefit.

30. The anecdotal evidence provided as to the effects of such non-coercive practices is therefore not measured or balanced with contrasting anecdotal evidence. As such, the HLRC Report's anecdotal evidence also does not evidence any coercive or aversive practices currently occurring within Tasmania or Australia.

31. On this basis, it is overwhelmingly clear that there is absolutely no direct or even anecdotal evidence to suggest that any coercive or aversive practices in respect of SOGI are currently occurring in Tasmania (or indeed within Australia at all). It is even unclear what broader SOGI conversion practices (according to the TLRI's above working definition) are currently occurring. Legislation to address any perceived problem in this regard is therefore unnecessary.

Question 4: ***"Do you think that Tasmanian law should be changed to address SOGI conversion practices? If so, should this be through comprehensive reform, amendment or both (a hybrid)? (See [4.2.12] on page 42 for possible considerations)."***

32. HRLA does not support reforms to Tasmanian law in respect of SOGI conversion practices (whether by comprehensive reform, amendment, or a hybrid approach) given that there is no evidence that any such practices are currently occurring within Australia.

33. If any legislation is introduced regarding SOGI conversion therapies, it should be very carefully drafted to *only* apply to coercive and aversive therapies. If narrowly drafted, we consider that there would likely be little opposition to such reform being enacted.

34. In any case, reform to address coercive and aversive conversion therapies would ultimately be unnecessary, given that existing laws (such as criminal laws in respect of personal violations such as assault) already sufficiently cover the sorts of physical abusive involved in such treatments. In

this regard, we note that section 3.2 of the Issues Report also confirms the TLRI's view that criminal laws on assault, wounding or causing grievous bodily harm would likely apply to physical practices such as aversion therapy.

35. On this basis, there is no need to address any perceived gap in Tasmanian law to cover these matters as existing laws would be sufficient to address any such problem if it did in fact exist.

36. As discussed above and below, HRLA does not support any reforms to Tasmanian law in respect of SOGI conversion practices which cover any broader scope than coercive or aversive conversion therapies, given that any broader definition may impinge on fundamental and religious freedoms and unnecessarily seek to modify existing principles in respect of lawful consent.

Question 5: ***"Should some or all forms of SOGI conversion practices be criminalised in Tasmania? If so, which, if any, should be dealt with as serious (indictable) crimes and which, if any, should be dealt with as less serious (summary) offences? (See [4.2.27] on page 45 for possible considerations)."***

37. As discussed above, only coercive and aversive conversion practices should potentially be criminalised in Tasmania (although we consider that unnecessary ultimately given the scope of existing laws and a lack of evidence that any such activities are currently occurring in Australia).

38. Any criminalisation or penalty provisions which are introduced should be linked to the severity of the crime and reflect existing criminal provisions, sanctions and offences, but given that there is no evidence such practices are currently occurring this would largely be a hypothetical and unnecessary exercise.

39. Any broader scope of SOGI conversion practices should not be criminalised in Tasmania.

Question 6: ***"Should some or all forms of SOGI conversion practices be made civil wrongs in Tasmania? If so, what sort of practices should people be liable for and how should those subject to such practices be compensated? (See [4.2.34] on page 47 for possible considerations)."***

40. Only coercive and aversive conversion practices should potentially be made civil wrongs in Tasmania, and only if such practices are also criminalised.

41. Again, we consider this unnecessary given the scope of existing laws and a lack of evidence that any such activities are currently occurring in Australia. In this regard, we note that section 3.2.4 of the Issues Report also acknowledges the TLRI's view that existing tort and civil liability provisions may already provide redress for harms caused by SOGI conversion practices, although some practical hurdles may exist.

42. If new civil provisions are introduced, only non-consensual practices should be made the subject of liability and compensable according to existing principles, but given that there is no evidence such practices are currently occurring this would largely be a hypothetical and unnecessary exercise.

43. Any broader scope of SOGI conversion practices should not be made civil wrongs in Tasmania.

Question 7: ***"Should any existing Tasmanian laws (besides criminal laws or the Civil Liability Act 2002 (Tas)) be amended to cover SOGI conversion practices? If so, which ones and in what way? (See [4.2.42] on page 50 for possible considerations)"***

44. Other existing Tasmanian laws should not be amended to cover SOGI conversion practices, including for example laws in respect of consumer protection and advertising. There is no evidence that any coercive or aversive conversion therapies are occurring and no justifiable need for such reform. Any broader scope of SOGI conversion practices should not be covered for the reasons discussed above and below in these submissions.

45. In our view, existing anti-discrimination, consumer protection and health and allied practices regulations, although limited in specific application to the broad sorts of SOGI conversion practices as defined by the TLRI, are already sufficient to cover the sorts of non-consensual and harmful practices which should be prohibited under these regimes.

Question 8: ***"Are there any other models or approaches that are preferable to, or should complement, changing the law? (See [4.2.47] on page 51 for possible considerations)."***

46. As HRLA does not support the proposed law reform, we also do not recommend introducing any other models or approaches to complement any change in the law. Such complementary changes could be set up in a way which encourages activism and weaponization of the legislative regime.

47. For example, things such as new complaints mechanisms or ombudsman investigations could facilitate the pursuit, investigation, sanction, punishment and suppression of parties such as churches, organisations and individuals who teach and practice traditional sexual ethics. It could also encourage anti-religious activists to weaponise any complaints regime to harass and seek to silence churches, organisations and individuals with religious convictions on SOGI issues with which they do not agree. Any targeted person may then be subject to long, stressful and costly processes. Far from being responsible and effective to address actual systemic issues, such systems could effectively just be used as a tool for ideological activists.

48. Such alternative models or approaches should only be considered as an alternative to introducing legislation and if they are focussed only on identifying coercive or aversive conversion therapies.

Question 9: ***"Are there any other matters that you consider relevant to this Inquiry and would like to raise? (See [4.2.48] on page 52 for possible considerations)"***

49. The Issues Paper does not properly deal with the impact of the proposed legislative changes on fundamental rights and religious freedoms. This issue is only cursorily referred to in sections such as 1.3.22 in the Issues Paper.

50. Because of its apparent overreach, the proposed changes would likely infringe on fundamental rights and freedoms under international law. Importantly, the proposed changes would be inconsistent with the *International Covenant on Civil and Political Rights* (**ICCPR**). For example, the proposed legislation would likely impact on:

    50.1. ***Article 17 – Privacy and reputation:*** The family has the right not be interfered with arbitrarily. The proposed legislative change (particularly considering the working definition

of SOGI conversion practices) would likely allow unjustifiable interference with this right to privacy with a disproportionate invasion of privacy by the State.

50.2. ***Article 18 – Freedom of thought, conscience, religion and belief:*** Everyone shall have the right to freedom of thought, conscience and religion and the right to manifest that in observance, practice and teaching. However, for example, any teaching by parents to children of orthodox religious beliefs on SOGI issues could be criminal "conversion therapy" under the working definition of SOGI conversion practices.

50.3. ***Article 18 – Right to Education*****:** The liberty of parents and legal guardians to ensure the religious and moral education of their children in conformity with their own convictions must be respected. Under the working definition of SOGI conversion practices, parents may be restricted in ensuring the religious and moral education of children in conformity with their convictions including in relation to issues of ethics, morality and personal identity.

50.4. ***Article 19 – Freedom of Expression:*** Everyone shall have the freedom to seek, receive and impart information and ideas of all kinds. However, under the current proposal, parents and teachers may be restricted from sharing and imparting information and ideas about sexual orientation and gender identity, except those that fit a transition narrative.

50.5. ***Article 23 - Protection of the family and children:*** The family is the fundamental group unit of society and is entitled to protection. The potential criminalisation of parents and guardians for the provision of moral and ethical teaching about sexual orientation and gender identity issues would be a breach of the fundamental rights of the family.

50.6. ***Article 26 – Recognition and equality before the law:*** All persons are equal before the law and entitled to equal protection without discrimination. The proposed changes would likely give unequal protection to persons promoting a single controversial practice in relation to issues of sexual orientation and gender identity and discriminate in favour of gender transition treatments that involve chemicals and hormones and invasive surgical practices.

51. The far-reaching effects of the proposed changes are disproportionate to the harms that any such legislation would seek to prevent. It would place unjustifiable limits on fundamental rights and freedoms that are completely unnecessary to achieve whatever legitimate aims such legislation might have. Less restrictive means are available to achieve such a purpose, including by the inclusion of tailored and appropriate definitions which do not impinge on such freedoms.

52. The current proposed definitions are also poorly designed and fail to meet the basic principles of good legislative design. They violate fundamental principles of good legal drafting. These include:

52.1. Legislation should be fit for purpose. If the purpose of the changes are to prohibit coercive and aversion therapy, legislation drafted on the basis of the proposed definitions would extend criminal sanction far beyond what is necessary for that purpose. They also extend far beyond what is necessary more generally to prevent harmful conduct towards people experiencing SOGI issues and capture a range of everyday and appropriate activities.

52.2. Legislation should give certainty as to its effect. The definitions proposed in the Issues Paper are vague and ambiguous and give no certainty.

52.3. Legislation should ensure that criminal offences are drafted clearly and care is taken to require wilful or deliberate conduct. The proposed drafting of the definitions in the Issues Paper fails such a test, as they could cover conduct by people who lack any intention whatsoever to engage in criminal conduct.

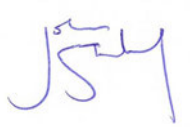
52.4. Legislation should not overreach and should not inhibit freedoms or undermine important values or institutions of Australian society. As set out above, the proposed changes would interfere disproportionately with fundamental freedoms.

53. Giving these failings in drafting design, it is likely that any legislation which is introduced according to the current proposal may not achieve its goals, would give rise to significant unintended consequences and would be likely to impose unnecessary costs. For these reasons, the proposed changes would be bad law and should be rejected.

CONCLUSION

54. We thank the TLRI for the invitation to make a submission and welcome any opportunities to appear in support of this submission.

Yours faithfully,



John Steenhof
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