Tasmania Law Reform Institute

Sexual Orientation and Gender Identity Conversion Practices

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[This is a public submission]

The above Issues Paper outlines a proposal to legislate against so-called sexual orientation and gender identity (SOGI) conversion practices in Tasmania. Community feedback has been sought, and this is mine.

First, sexual orientation (SO) and gender identity (GI) cannot be conflated at law, for any reason. Sexual orientation is the romantic and/or sexual attraction of an individual to either persons of the opposite sex, or the same sex, or both sexes. There are only two sexes in humans – female and male – despite the notion held by some that 'sex' is either a social construct, or exists on a spectrum. Both ideas are nonsense, and the existence of a very tiny minority of persons born with a difference of sex development (intersex) does not change the material reality of human sexual dimorphism.

It matters not how many male persons in a frock and lipstick proclaim themselves to be lesbian, or say they are 'widening the bandwidth of how to be a woman', or 'bringing out the inner lesbian in women' (Alex Drummond, 2015), a lesbian is a female person who is sexually and romantically attracted to other female people.

Likewise, a gay man is a male person who is sexually and romantically attracted to other male people.

Historically, so-called conversion practices, insofar as they relate to sexual orientation, were directed at homosexual (same-sex attracted) and bisexual people. I think we can all agree that such practices are a thing of the past in most modern societies, including Tasmania. There is no need for dedicated legislation to address a practice that likely no longer exists, and for which there is currently no clear evidence.

Gender identity, on the other hand, exists on an ever more crowded range, with the number of recognised genders growing steadily. In the time it takes to write this submission, several others could possibly be added to the list. As a term at law, it defies reliable definition.

It appears that the 'SOGI' combination - aligning gender identity with sexual orientation - is a cynical, and not very well disguised, attempt to legislate against 'practices' that allegedly seek to change or suppress the gender identity of an individual, whatever that might be.

It is impossible to regulate actions in relation to something that is entirely personal and endlessly mutable. Today's 'conversion practice' could be tomorrow's 'affirmation', depending on the mood of the putative complainant. Imagine, for example, a teenage girl seeks gender transition and requests, nay demands, testosterone administration. Any attempt to take a more cautious path with counselling and other psychological therapies could be construed as a conversion practice, and health care providers will be extremely reluctant to provide this option. In five years, the young woman decides to detransition. Where does she go for counselling support and affirmation of her decision when all such support has been legislated out of existence by draconian SOGI prohibition laws?

[For an example of this ever more regular phenomenon see the UK High Court decision in *Bell v Tavistock*].

Second, it is arguably a waste of parliamentary time and resources to attempt the legislative regulation of activities and behaviours for which there is no robust evidence - gender identity conversion practices.

For an attribute with no legal definitional certainty, 'gender identity' is already afforded extensive protections at law in Tasmania. For example, gender and gender identity are protected attributes under the *Anti-Discrimination Act 1998 (Tas)*, but 'sex' is not. A male person who identifies as female – who has a female gender identity – is embraced by a law that specifically upholds their rights. A female born person is not so fortunate.

According to Ruth Forrest MLC, whose final version of amendments to the *Anti-Discrimination Act* and the *Births, Deaths and Marriages Registration Act 1999 (Tas)* gave Tasmania its 'gold standard' transgender rights laws, 'sex' does not require definition at law.

But it does, when the sex-based rights of female people are at odds with those of female identifying male people – for example when trans identifying males seek to compete with and against females in women's sports.

It is offence against women's sex-based rights to compound this disregard for their protection at law by seeking to punish anyone who questions notions of gender and gender identity, under the guise of prohibiting conversion practices. The term 'conversion practices' is highly emotive, conjuring up an image of helpless innocents being ruthlessly tortured just for being true to themselves. Is there any evidence this is happening in Tasmania? Is there evidence that a legislative ban on conversion practices is necessary?

NOTE: Thanks to the aforementioned Ms Forrest, 'gender' in Tasmania now means –

(a) male; or
(b) female; or
(c) indeterminate gender; or
(d) non-binary; or
(e) a word, or a phrase, that is used to indicate a person's perception of the person's self as being neither entirely male nor entirely female and that is prescribed; or

(f) a word or phrase that is used to indicate a person's perception of the person's self as being neither entirely male nor entirely female.

(*Births, Deaths and Marriages Registration Act 1999 (Tas)*, Section 3A).

This is what Tasmanian legislators will be working with, if and when they attempt to regulate gender identity conversion practices. 'Gender', 'gender identity' and gender ideology have many sensible, articulate opponents - they have an inherent lack of robust form that is both academically and practically unappealing. Should lawmaking be about constructing props for a nebulous, shifting ideology?