



# Queensland Parliament-- Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee

Inquiry into the  
*Health Legislation Amendment Bill 2019 (QLD)*

**Joint Submission by**

Christian Schools Australia (CSA)

Adventist Schools Australia (ASA)

Associated Christian Schools (ACS)

Australian Association of Christian Schools (AACS)

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## Introduction

Christian Schools Australia (CSA), Adventist Schools Australia (ASA), Associated Christian Schools (ACS) and the Australian Association of Christian Schools (AACS) are national bodies that support and represent schools for whom religious formation is an integral part of the education process.

In combination, CSA, ASA, ACS and AACS schools educate more than 145,000 students across more than 335 locations nationally. Within Queensland there are schools in over 80 locations educating nearly 40,000 students. Globally, CSA is part of the Association of Christian Schools International (ACSI). There are 24,000 schools educating in excess of 5.5 million students in over 108 countries around the world within this network. ASA schools are part of the wider Adventist Church, which educates around 2 million students globally.

Member schools of CSA, ACS and AACS operate as independent, locally governed, religious organisations. Some are closely aligned with one or more Christian churches in their communities, while others have their heritage in a group of parents coming together to start a school. ASA schools operate on a systemic basis, with small systems established in line with wider Adventist Church governance arrangements.

*A bill whereby the government mandates a school counsellor's response to a particular student, regardless of their clinical opinion and under the guise of banning vaguely defined 'conversion therapy' - is dangerous and unjustified.*

### Abhorrent 'therapeutic' practices cannot be supported

It is important to be clear that the abhorrent practices of the mid-20<sup>th</sup> century cannot, and are not, in any way supported. The use of lobotomies, chemical castration with hormonal treatment, aversive treatments including the application of electric shock to the hands and/or genitals as part of the treatment regimens once promoted by prominent (and generally not religious) mainstream medical and psychiatric practitioners is rightly condemned, more so if undertaken coercively.

Whether there is a need for new legislation to address these practices is, however, questionable as there is **no evidence that they remain in use** within Australia. Indeed, during the Public Briefing held on 9 December both neither Dr Wakefield or Mr Mahler from Queensland Health were, when questioned, see page 7 of the transcript, **unable to provide any evidence** of these or other 'conversion therapy' practices occurring within Queensland. Even if evidence emerges to suggest that such practices are ongoing, existing regulation of medical and health services would seem to provide an appropriate mechanism to deal with these practices if they are occurring and not subject to existing criminal law.

During the Public Briefing Dr Wakefield indicated that “While several states and territories have announced plans to ban conversion therapy, Queensland will be and is the first jurisdiction to introduce legislation”. Victoria and the ACT have announced such proposals, which may or may not constitute ‘several states and territories’ but, as pointed out, neither have introduced or even drafted legislation at this time. This makes it even more important that the Queensland Government, in introducing legislation which may become the model for other jurisdictions takes the time to ensure the Bill is properly scrutinised and supported by clear evidence.

### ‘Conversion Therapy’ must be more clearly defined

The Bill, in the proposed sub-section 213F(1) of the *Public Health Act 2005* (QLD), provides a definition of ‘conversion therapy’ as –

***Conversion therapy*** is a treatment or other practice that attempts to change or suppress a person’s sexual orientation or gender identity

The proposed sub-section 213F(2) goes on to exclude ‘gender affirming’ practices and sub-section 213F(3) introduces a vague exclusion for practices that in the provider’s reasonable professional judgment, is necessary to

- provide a health service in a manner that is safe and appropriate; or
- comply with the provider’s legal or professional obligations

Once again the commentary provided at the public briefing on 9 December gives important background and context for the definition. According to Mr Mahler the definition was “informed heavily by leading research from La Trobe University”. This “research”, *Preventing Harm, Promoting Justice: Responding to LGBT Conversion Therapy in Australia* (HRLC Report) is written by the Human Rights Law Centre, La Trobe University and Gay & Lesbian Health Victoria. The HRLC Report goes well beyond merely looking at the discredited practices outlined above and includes discussion of “Sexual Identity Therapy”. Sexual Identity therapy is described as allowing people to “acknowledge same-sex attraction or gender diversity” while “prioritising religious values in their sense of self and identity formation”. “Prioritising religious values [beliefs]” over personal desires or needs, across a wide range of issues, is at the heart of orthodox Christian teaching.

In simplistic terms, there are many calls within the Bible for Christians to deny or put off ‘the old self’ and to seek a new life in Christ – it is at the heart of the Gospel message. This applies across all areas of life – **is the proposed Bill seeking to make this fundamental tenet of Christian faith unlawful for health practitioners?**

*Health practitioners must be able to advance the best interests of their patients in any given situation and with all the information necessary to make proper decisions.*

Within the context of Christian school environment, allegations were made in a Senate Committee hearing late last year of “what amounted to conversion therapy” in relation to a child of a witness.<sup>1</sup> These claims were subsequently comprehensively debunked.<sup>2</sup> The HRLC Report authors also indicates that they “are concerned that staff at schools, particularly religious schools, may refer children to conversion practices” without providing any evidence either of this occurring or any clear indication of what is meant by ‘conversion practices’. During the Public Briefing Mr Mahler talked of the Bill, page 8, applying to conduct within schools. **Is the effect of the Bill to criminalise any discussion of issues related to sexuality or identity by psychologists, counsellors, chaplains or other staff in schools?**

The proposed definition of ‘conversion practices’ is **dangerously imprecise for legislation involving criminal sanctions**. It risks, in effect, directly impacting Christian schools and their wellbeing and pastoral care programs.

No sensible consideration of the proposed Bill can take place without firstly clarifying what conduct is intended to be proscribed and in what circumstances. This must be a first step to allowed informed and considered responses.

### Informed public consultation is essential

The Bill proposes the creation of new criminal penalties for a ‘health service provider’. As outlined above, however, the fundamental definition of the conduct involved is woefully inadequate.

In addition, the definition of ‘health service provider’ is extremely broad, encompassing not only registered health practitioners as commonly understood but also any “individual who provides a health service”.<sup>3</sup> A “health service” to be broadly defined as any “service that is, or purports to be, a service for maintaining, improving, restoring or managing people’s health and wellbeing”.<sup>4</sup> There are no limits on where this service is provided, with schools included in the ambit of the definition according to Mr Mahler in the Public Briefing, see page 8.

It is effectively impossible to properly consider a Bill imposing criminal sanction without knowing precisely the activities that may result in criminal charges and to whom the sanctions may apply. Sensible and informed, as opposed to ideologically driven, discussion must be undertaken within an understanding of what is at stake. This public discussion must occur prior to any legislative response being considered by parliament. **Criminal laws based on ‘soundbites’, ill-informed unsubstantiated claims by activists and in turn, misplaced government narratives accompanying them are a fundamental injustice.**

The Queensland Government must firstly clarify what activities it is proposing to be outlawed by the Bill and to whom it will apply and then undertake proper, informed, public consultation around this issue. Without this process **any legislation is premature**.

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<sup>1</sup> Australian Senate, Legal and Constitutional Affairs References Committee, *Legislative exemptions that allow faith based educational institutions to discriminate against students, teachers and staff*, Monday, 19 November 2018 (9).

<sup>2</sup> *Ibid* (32).

<sup>3</sup> *Health Ombudsman Act 2013* (QLD) section 8.

<sup>4</sup> *Ibid*, section 7.

## Legislative proposals must be evidence based

The discussion above has already provided some examples of where the “research” on which the Bill is based are inadequate. They simply **do not provide a sufficient evidence base for legislation**, particularly criminal legislation.

The three organisations which published the HRLC Report have a **long history of activism** in support of LGBT issues. The report itself consists largely of a selective literature review and interviews with a **mere 15 people** “recruited through social media, LGBTI media reportage of the project, and through various LGBTI, queer and ex-gay survivor networks”.<sup>5</sup> Even the 15 are a partially self-selecting sub-set of an initial 50 respondents, with experiences no later than 2016 and some as far back as 1986 – more than three decades ago!<sup>6</sup> **Apart from the very small and highly skewed sample size, the currency and relevance of these experiences, especially in relation to childhood experiences is highly questionable.**

The reference by Mr Mahler, see page 11, in the Public Briefing to “international legislation” may also give a false impression of the state of international law. Only two nations, of the 193 who are members of the United Nations, are commonly claimed to have legislation banning conversion therapy. In fact one of those, Ireland, has not passed legislation, it has remained in the Seanad having reached stage 3 of 11 stages since being introduced in April 2018.<sup>7</sup> Mention is sometimes made of the 14, of the 50, states in the United States who have passed legislation, however the HRLC Report points to the narrow application of this legislation and suggests that it is not a suitable model.<sup>8</sup> In short, **there are only a tiny minority of jurisdictions who have passed legislation to ban conversion therapy.**

The Queensland Government must firstly define what is being considered under the rubric of ‘conversion therapy’ and then undertake a comprehensive, evidence-based, review of the full implications of any such, almost unprecedented, Bill. **A short inquiry by a Parliamentary committee over the Christmas/New Year period is simply not enough.** An extensive public inquiry will help to inform the public consultation process and ensure a more robust evidence base for any legislation.

## Genuine questioning must be allowed

Recently a New Zealand Parliamentary Committee considered petitions to ban ‘conversion therapy’.<sup>9</sup> The Committee recognised “the inherent difficulty in designing rules to outlaw conversion therapy”,<sup>10</sup> and that it would “be a challenge to determine which practices should be defined as conversion therapy and which should be legitimate activities for religious and other groups”.<sup>11</sup> The Committee ultimately did not recommend a ban, indicating that more consideration was needed.

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<sup>5</sup> HRLC Report [2.3.1]

<sup>6</sup> Ibid [2.3.1]

<sup>7</sup> For details of the Bill and its progress see < <https://www.oireachtas.ie/en/bills/bill/2018/39/>>.

<sup>8</sup> HRLC Report [6.5.1]

<sup>9</sup> New Zealand House of Representatives, Report of the Justice Committee: *Petition of Max Tweedie for Young Labour and the Young Greens: Ban Gay Conversion Therapy, Petition of Amanda Ashley: Ban Conversion Therapy in New Zealand*, October 2019

<sup>10</sup> Ibid, p3.

<sup>11</sup> Ibid, p4.

Significantly, the Committee recognised the vital need to allow questioning and advice (emphasis added)–

*‘It is important that anyone with questions about their sexuality or gender identity feels comfortable seeking advice. This may be from a professional counsellor, family and friends, or within their religious community.*

***A ban on conversion therapy should not prevent anyone from seeking or providing such advice.’***

For schools, as they walk with emerging adults as they establish their own identity and developing personhood, this is essential. For generations young people have sought the advice of teachers and other staff in matters far beyond the subject matter of a classroom.

*Under this bill, health practitioners may be too afraid to probe or question underlying issues and in the worst cases, matters that should be mandatorily reported may be missed.*

All jurisdictions across Australia are signatories to the Alice Springs (Mparntwe) Declaration,<sup>12</sup> which asserts in its Preamble:

*“Education plays a vital role in promoting the intellectual, physical, social, emotional, moral, spiritual and aesthetic development and wellbeing of young Australians, and in ensuring the nation’s ongoing economic prosperity and social cohesion.”*

We agree strongly that the education of the whole child is not complete unless it includes spiritual, moral, emotional and aesthetic development alongside the more commonly stated domains of intellectual, physical and social. This also includes areas of sexuality and identity. **Students must be able to seek advice from school staff about their sexuality or gender identity and school staff must be able to respond to those questions.** This is an essential component of all schools, including those within CSA, ASA, ACS and AACS.

### Religious teaching must be respected

On behalf of the parents who choose such a faith-based education, and the church and faith communities that deliver it, schools represented in this submission are overt and particular about the

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<sup>12</sup> Education Council, *Alice Springs (Mparntwe) Education Declaration* (December 2019) Education Council < [http://www.educationcouncil.edu.au/site/DefaultSite/filesystem/documents/Reports%20and%20publications/Publications/Alice%20Springs%20Declaration/Alice%20Springs%20\(Mparntwe\)%20Education%20Declaration%20\(accessible\).pdf](http://www.educationcouncil.edu.au/site/DefaultSite/filesystem/documents/Reports%20and%20publications/Publications/Alice%20Springs%20Declaration/Alice%20Springs%20(Mparntwe)%20Education%20Declaration%20(accessible).pdf) >.

beliefs and values that underpin curriculum, culture and practice. This includes orthodox Christian teaching on personhood, identity and sexuality.

The clearest expression of the protections afforded religious freedom is undoubtedly Article 18 of the International Covenant on Civil and Political Rights (ICCPR).<sup>13</sup> The United National Human Rights Committee has provided additional interpretative guidance on Article 18 in its General Comment 22.<sup>14</sup> As noted in the recent Andrews Committee interim report,<sup>15</sup> looking at religious freedom in Australia, this General Comment gives the freedom a ‘broad scope’ and reinforces the ‘fundamental’ nature of the right.

Importantly, both Article 18 itself and the General Comment recognise the right to ‘manifest’ religion in ‘worship, observance, practice and teaching’ including ‘in community with others’.<sup>16</sup> In a complex contemporary society this is often done ‘in community with others’ through a variety of means, including corporate structures. Christian and Adventist schools, for example, are required to be incorporated by funding legislation,<sup>17</sup> but are no less a communal expression of faith. The importance of the community element of the protections have been recognised by the European Court of Human Rights commenting that they lay ‘at the very heart of the protection’ of religious freedom.<sup>18</sup>

A number of other international instruments explicitly include recognition of the right to establish faith based schools.<sup>19</sup> This builds on the rights of parents recognised in the ICCPR to ‘ensure the religious and moral education of their children in conformity with their own convictions’.<sup>20</sup> Similar rights are also recognised in the *Convention on the Rights of the Child* (CROC) to which Australia is also a signatory.<sup>21</sup>

It would be a grave infringement of these fundamental rights if any Bill seeking to ban ‘conversion therapy’ had the result, directly or indirectly, of impacting what is taught within a Christian or other faith-based school. **The Queensland Government must guarantee that Christian schools can continue to teach a traditional Biblical sexual ethic and a biologically and medically accurate view of sexuality.**

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<sup>13</sup> *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, UNTS171 (entered into force 23 March 1976) (*‘the ICCPR’*).

<sup>14</sup> UN Human Rights Committee, *General Comment No. 22: The Right to Freedom of Thought, Conscience and Religion (Article 18)*, 48th sess, UN Doc CCPR/C/21/Rev.1/Add.4 (27 September 1993) (*‘General Comment 22’*).

<sup>15</sup> Joint Standing Committee on Foreign Affairs, Defence and Trade, *Interim Report, Legal Foundations of Religious Freedom in Australia* (2017) (*‘Andrews Committee interim report’*)

<sup>16</sup> ICCPR Article 18(1)

<sup>17</sup> See, e.g., *Australian Education Act 2013* (Cth) s75(2).

<sup>18</sup> *Hasan and Chaush v Bulgaria*, App No 30985/96, (2002) 34 EHRR 55, [62] quoted in Andrews Committee interim report [3.31].

<sup>19</sup> See, e.g., *Declaration on the Elimination of all Forms of Intolerance and Discrimination based on Religion or Belief* Article 5, *Convention against Discrimination in Education* Article 5(b) in Appendix One.

<sup>20</sup> ICCPR Article 18(4).

<sup>21</sup> *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990). Australia ratified the Convention on 17 December 1990.

## Summary of Recommendations

Christian and Adventist schools represented by this submission consider the decision to ban vaguely defined 'conversion practices' as premature and unjustified. We recommend that -

1. Before a proper decision can be made, or even discussion commence, the term 'conversion therapy' must be more clearly and precisely defined.
2. Informed public discussion must precede any proposal for legislation, including clarity as to whom, and when, criminal penalties apply.
3. Legislative responses must themselves be based on sound evidence and research.
4. Genuine questioning and advice must be allowed under any proposal.
5. Guarantees must be provided about ongoing rights to religious teaching.