Current and Emerging Threats to TGD Human Rights

Submission to AHRC's Consultation by [redacted]

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Summary: NSW Parliament's recently passed *Conversion Practices Ban Bill 2024* aimed to provide *greater* protection to people from *gender* and *sexuality* conversion practices. However, when this new Bill comes into effect on 22 March 2025, paradoxically TGD people will become *more vulnerable* to gender conversion practices. This is because some Australian mental health practitioners engage in gender conversion practices, but yet according to this new Bill services and treatments *provided by registered health practitioners* will be exempt from its civil and criminal provisions. This threatens the human rights of TGD people for two inter-connected reasons. Firstly, emboldened by successful exploitation of their professional status – i.e. the mutual respect that highly trained professionals typically afford one another, including to express dissenting views on matters of professional judgment – a number of highly vocal trans-hostile mental health practitioners in Australia and abroad have increasingly created confusion and fear about gender-affirmative health care, while employing misleading euphemisms like "watchful waiting" and "gender exploration therapy" to obscure the true nature of their conversion practices. Secondly, the *Royal Australian and New Zealand College of Psychiatrists* (RANZCP) – the peak professional association for mental health practitioners – has professional standards which protect members who practice gender conversion. Specifically, the RANZCP's published position statements on this topic officially denounce *sexuality* conversion practices, while concurrently denying that conversion practices can target *gender*. This creates a professional standard which shields trans-hostile mental health professionals who engage in *gender* conversion practices from this new Bill's civil and criminal provisions.

Introduction

On 22 March 2024, NSW Parliament passed the *Conversion Practices Ban Bill 2024* (New South Wales Parliament) — henceforth "Bill". This Bill, due to come into effect in 2025, aims to "ban practices directed to changing or suppressing the sexual orientation or gender identity of individuals,... creating [criminal] offences and a civil complaints scheme in relation to the[se] practices" (New South Wales Parliament 2024: 1).

However, although this Bill might protect TGD people from *some* (e.g. religious) sources of gender conversion practices, unfortunately its wording creates loopholes through which trans-hostile health professionals – who oppose gender-affirming health care, and advocate

for- and engage in conversion practices – will gain immunity from this Bill's criminal and civil sanctions because of **(A)** their *status* as health care providers, **(B)** the latitude this Bill grants health professionals to exercise *discretion*, and how **(C)** *professional standards* define "reasonableness" in relation to mental health professionals' obligations.

Problems with the Conversion Practices Ban Bill 2024

In relation to points **(A)** and **(B)**, Sections 3.a. and 3.b. of this Bill state:

> (3) A conversion practice does not include—
>
> (a) a health service or treatment provided by a registered health practitioner that—
>
> (i) the registered health practitioner has assessed as clinically appropriate in the registered health practitioner's reasonable professional judgement, and
>
> (ii) complies with all relevant legal, professional and ethical requirements, or
>
> **Examples of health services or treatments that do not constitute a conversion practice**—
> any of the following health services or treatments assessed by a registered health practitioner as clinically appropriate—
>
> - genuinely assisting an individual who is exploring the individual's sexual orientation or gender identity or considering or undergoing a gender transition
> - genuinely assisting an individual who is receiving care and treatment related to the individual's gender identity
> - genuinely advising an individual about the potential impacts of gender affirming medical treatment
>
> (b) genuinely facilitating an individual's coping skills, development or identity exploration to meet the individual's needs, including by providing acceptance, support or understanding to the individual… (New South Wales Parliament 2024: 3)

However, there already are mental health professionals in Australia who exploit the mutual regard that professionals typically afford one another by openly and aggressively opposing gender affirmative trans health care,[1] who employ misleading euphemisms like "gender exploration" and "watchful waiting" to disguise their harmful gender conversion practices,[2] and who conduct methodologically flawed and ethically fraught clinical studies on vulnerable trans youth,[3] while citing each other along with a growing body of trans-hostile misinformation, propaganda, and ideology to support their harmful practices.[4]

If no mental health practitioners engaged in gender conversion practices, then this Bill's civil and criminal provisions would indeed afford *greater* protection to TGD people. But since some Australian mental health professionals engage in gender conversion practices, this Bill's stipulation that services or treatments rendered by registered health practitioners will not count as conversion practices, means that once this Bill comes into effect, these trans-hostile mental health professionals will become immune from its provisions.

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[1] For instance, see (Steenhof, 2023) discussion of Dr Jillian Spencer.

[2] For instance, see Dr Roberto D'Angelo and colleagues' discussion of "gender exploratory therapy" (D'Angelo et al. 2021; D'Angelo 2023) – and contrast this with Florence Ashley's critique which argues that gender exploratory therapy is simply a different name for unethical conversion therapy (Ashley 2023) – as well as Kenneth J. Zucker's (2019) and Sasha Ayad & Stella O'Malley's (Ayad and O'Malley 2023) discussion of what's actually involved in "watchful waiting".

[3] For instance, see (Kozlowska et al. 2021).

[4] For instance, see the work of Robert Lane who offers an insightful public record commentary about gender conversion practitioners that engage in "watchful waiting" (2022), who also runs the trans-hostile disinformation web site "Gender Clinic News" (see previous reference), and his inaccurate and alarmist trans-hostile work is published in *The Australian*.

Problems with RANZCP's professional standards

In relation to point **(C)**, given that Australia's peak professional association for mental health practitioners – the Royal Australian and New Zealand College of Psychiatrists (RANZCP) – surprisingly *permits* psychotherapy to be used for gender (but not sexuality) conversion, a mental health professional's decision to inflict gender conversion on a patient will be protected under this Bill as an instance of their due exercise of "*reasonable* professional judgment".

The RANZCP's position is spelled out in two published Position Statements (PS), as follows:

- PS #103 categorically denies that psychotherapy can ever count as an instance of gender conversion *via* its claim that "Psychotherapy is not conversion therapy". (RANZCP 2024b) Although a less categorical claim might have been warranted – such as that psychotherapy is not *necessarily* conversion therapy – the above claim is equivalent to stating that *necessarily* psychotherapy is not conversion therapy. However, as the views and practices of trans-hostile mental health professionals referred to in the earlier discussion demonstrate, psychotherapy *can* be (and indeed *is* being) used for the purpose of gender conversion in Australia.

- And while the RANZCP's PS #60 sets out its opposition to "Sexual orientation change efforts (SOCE)", at the same time PS #60 also explicitly states that this opposition does not extend to *gender* conversion practices, through the qualification that "[s]exual orientation is different to gender identity, and [that] SOCE does not refer to those undergoing gender *re*affirmation therapy or management." (RANZCP 2024a, emphasis added) Two comments bear emphasis. Firstly, while sexual orientation and gender identity are indeed not the same, the cumulative effect of (i) the fact that even in its title PS #60 only refers to *sexual orientation*, and that (ii) this further qualification explicitly removes gender orientation from PS #60's consideration, is to *limit the RANZCP's opposition to just sexuality (but not gender) conversion practices*. Secondly, the RANZCP's euphemistic use of the neologism "gender *re*affirmation therapy" further protects trans-hostile mental health practitioners who engage in gender conversion.

Together, these two position statements create a *de facto* professional standard — one that can be- and is being exploited by trans-hostile mental health professionals in Australia who are ideologically opposed to gender affirmative TGD health care. Point **(C)**'s core message is that this professional standard can be cited by trans-hostile mental health practitioners in their own defence, as evidence that their practices comply with the standards of their peak professional body.

Call to action

Urgent action is needed to protect the human rights of TGD people by addressing problems with *this new Bill* and with *the professional standards* of the RANZCP. If this does not occur, once this new Bill comes into effect, TGD people will rather paradoxically become even more vulnerable (rather than less vulnerable) to having their human rights violated by trans-hostile mental health practitioners.

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