



2 September 2021

S21.22

Submission to the Health Committee on the Conversion Practices Prohibition Bill- 56-1

Background

1. The National Council of Women of New Zealand, Te Kaunihera Wahine o Aotearoa (NCWNZ) is an umbrella group representing over 200 organisations affiliated at either national level or to one of our 14 branches. In addition, about 450 people are individual members. Collectively our reach is over 450,000 with many of our membership organisations representing all genders. NCWNZ's vision is a gender equal New Zealand and research shows we will be better off socially and economically if we are gender equal. Through research, discussion, and action, NCWNZ in partnership with others, seeks to realise its vision of gender equality because it is a basic human right.
2. This submission has been prepared by the NCWNZ Health Standing Committee and the Parliamentary Watch Committee after consultation with the membership of NCWNZ.

Executive Summary

3. NCWNZ strongly supports the objectives and provisions of this Bill which fully align with NCWNZ policy of equality and equal rights for all genders, non-binary and intersex people.
4. We note that the Bill contributes towards meeting Aotearoa New Zealand's obligations under the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)¹ and the Convention on the Rights of the Child (UNCROC)², but further legislation is required regarding intersex infants and children.

¹ United Nations. 1979. Convention on the Elimination of All Forms of Discrimination against Women New York, 18 December 1979. <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CEDAW.aspx>

² United Nations. 1989. Convention on the Rights of the Child. <https://www.unicef.org/child-rights-convention/convention-text>

5. Our recommendations aim to strengthen further the rights and protection of our LGBTQI community, and in so doing, extend beyond the provisions of the Bill to other actions Government, the Human Rights Commission and others need to take to protect the rights and wellbeing of our LGBTQI community.

Recommendations

6. The Government undertake consultation, policy development and legislation regarding genital surgery on intersex infants and children and the protection of intersex children and infants under the Human Rights Act 1993³ and the New Zealand Bill of Rights Act 1990⁴.
7. The Government and Human Rights Commission work with the health sector to improve gender-affirming care and to prevent conversion practices from being performed on patients.
8. The Committee consider including in the Bill a ban on advertising conversion therapy treatment.
9. The Committee consider the relationship of this Bill to pending legislation to strengthen protections against the incitement of hatred or hostility and to make necessary adjustments to the Bill to ensure it includes provision adequate protection of the LGBTQI community.
10. The Committee reconsider the penalty under Clause 8 and whether it should be a lesser penalty than that defined under Clause 9.
11. The Committee consider including the offence of “negligence” in the Bill.
12. The Committee consider whether under Clause 8 and Clause 9 there is adequate protection for people 18-25 years of age.
13. Clarify the definition of “reckless” in Clause 9.
14. Remove Clause 12.
15. The Government provide adequate resources to the Human Rights Commissions and organisations and networks of LGBTQI people to inform people of the legislation, their rights, how to obtain redress, and where to access support to obtain redress. Education for the general public about conversion practices, their harmful effect, and details of the law prohibiting conversion practices, is also vitally important.

³ Human Rights Act 1993.

https://www.legislation.govt.nz/act/public/1993/0082/latest/DLM304212.html?search=ta_act%40act_H_a_c%40ainf%40anif_an%40bn%40rn_25_a&p=3

⁴ New Zealand Bill of Rights Act 1990.

https://www.legislation.govt.nz/act/public/1990/0109/latest/DLM224792.html?search=ta_act%40act_N_a_c%40ainf%40anif_an%40bn%40rn_25_a&p=4

16. The Government and Human Rights Commission provide education and publicity about the legislation that is understandable for everyone.
17. The Government extend the scope of Accident Compensation payments to cover mental injury as a result of conversion practices.

Introduction

18. NCWNZ members strongly support the objectives of the Bill which are fully aligned with recent NCWNZ policy to be inclusive and to actively support and advocate for the rights and equality of all genders, non-binary and intersex people^{5 6}. We welcome the Bill as part of a range of legislative measures required to fully meet Aotearoa New Zealand's obligations under international charters Aotearoa New Zealand has signed, including CEDAW.
19. We acknowledge the difficulties of defining "conversion therapy" and the challenge for legislative drafters to draw a distinction between seriously harmful and impermissible attempts to change someone's sexuality/gender, which become criminal charges, and clumsy ill-informed or well-meaning conversations within families and communities which could be the subject of civil action. The Bill is an attempt to strike a balance, one we believe, for the most part, has been achieved, with some reservations and recommendations as detailed below.
20. We believe, during Committee consideration of this Bill and, critically, in accompanying public education and publicity, further work needs to be done to clarify the definition of conversion therapy, specifically what is, and what is not acceptable, and for this information to be disseminated in ways that everyone can understand.

⁵ That NCWNZ actively supports and advocates for an intersectional approach to gender equality. NCWNZ 18.3.3.2. 2020. NCWNZ. 2021. Appendix "D": Resolutions of National Meetings 2011-2020. https://d3n8a8pro7vhmx.cloudfront.net/ncwnz/pages/1025/attachments/original/1622428501/Appendix_D_Resolutions_2011-2020.pdf?1622428501

⁶ That NCWNZ acknowledges the rights of people of all genders, including those who identify as female, male or non-binary and further, NCWNZ recognises trans women as women, and trans men as men. NCWNZ 18.10.4, 2019. NCWNZ. 2021. Appendix "D": Resolutions of National Meetings 2011-2020. https://d3n8a8pro7vhmx.cloudfront.net/ncwnz/pages/1025/attachments/original/1622428501/Appendix_D_Resolutions_2011-2020.pdf?1622428501

International Human Rights Obligations

Obligations under CEDAW

21. In their Concluding Observations on the 2018 New Zealand report⁷, the Committee on the Elimination of Discrimination against Women states:

Definition of equality and non-discrimination

Para 11: The Committee notes that under the New Zealand Bill of Rights Act 1990 (sect. 19 (1)) and the Human Rights Act 1993 (sect. 21 (1) (a)) sex-based discrimination in the public and private spheres, including indirect discrimination, is prohibited. However, the Committee is concerned that the State party's legislation on discrimination against women is not fully in line with articles 1 and 2 of the Convention. The Committee is also concerned that:

- a) Discrimination on the grounds of gender identity, gender expression or sex characteristics are not specifically prohibited.

Discriminatory stereotypes and harmful practices

Para 23: While noting the efforts made by the State party to eliminate negative stereotypes affecting women, the Committee expresses concern about the following:

- c) The conduct of medically unnecessary procedures on intersex infants and children before they reach an age at which they are able to provide their free, prior and informed consent, and the inadequate provision of support and counselling for the families of intersex children and of remedies for victims.

Para 24: The Committee recommends that the State party: (c) Adopt clear legislative provisions explicitly prohibiting the performance of unnecessary surgical or other medical treatment on intersex children before they reach the legal age of consent, provide families with intersex children with adequate counselling and support, and provide redress to intersex persons having undergone medical treatment.

22. The current Bill goes some way to addressing these issues, as Conversion Therapy is clearly gross discrimination against LGBTQI people and an unnecessary and harmful procedure. There remains an urgent need for consultation, policy development and legislation regarding genital surgery on intersex infants and children, and their protection, under the Human Rights Act and Bill of Rights, which have never been tested.

Obligations under UNCROC

23. The Bill will also contribute to Aotearoa New Zealand's obligations relating to the rights of children to prevent torture or other inhuman treatment or punishment; and the

⁷ Committee on the Elimination of Discrimination against Women. 2018. Concluding observations on the eighth periodic report of New Zealand. CEDAW/C/NZL/CO/8. https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fNZL%2fCO%2f8&Lang=en

rights to take part in societal life, including enjoyment of the highest standard of physical and mental health.

Specific clauses

24. As stated above, NCWNZ strongly supports the intent and most provisions of this Bill. Our following comments focus on strengthening and clarifying the legislation.

Clause 5 Meaning of conversion practice

Clause 5 2(a) Health Practitioners

25. Many NCWNZ respondents wished to remove the blanket exemption for health practitioners to continue practising conversion practices under this section. We applaud the fact that conversion therapy has been condemned by key professional bodies including the Royal Australian and New Zealand College of Psychiatrists, New Zealand College of Clinical Psychologists, New Zealand Association of Counsellors and Aotearoa New Zealand Association of Social Workers. We also acknowledge that the New Zealand Psychological Society, New Zealand College of Clinical Psychologists, and the New Zealand Psychologists Board have all adopted a code of ethics that prioritise the well-being of patients and non-discrimination as core tenets of ethical practice. Under these guidelines, conversion therapy does not constitute ethical practice. However, this code is not legally binding, and does not apply to the many non-professionals who practice conversion therapy.

26. Research undertaken by Counting Ourselves⁸ showed that one in six transgender or non-binary people had experienced conversion therapy by a medical professional. While we understand that regulation of health professionals is set out in the Health Act 1956⁹, this concerning research shows that more work needs to be done by the health sector to improve gender-affirming care and to prevent conversion practices from being performed on their patients. We urge the Select Committee to recommend this.

27. We would also like the Committee to consider including a ban on advertising conversion therapy treatment.

Clause 5 2(f) Religious Principles

28. We acknowledge that this is a difficult area with a very fine line between expressing a religious belief and some forms of “conversion therapy”. In this area, we believe the Committee needs to consider the relationship of this Bill to pending legislation to strengthen protections against the incitement of hatred or hostility. With regard to hate speech, we believe the current law needs to be made clearer in order that it does

⁸ Veale J, Byrne J, Tan K, Guy S, Yee A, Nopera T, Bentham R. 2019. *Counting Ourselves: the health and wellbeing of trans and non-binary people in Aotearoa New Zealand*. Transgender Health Research Lab, University of Waikato: Hamilton NZ. <https://countingourselves.nz/index.php/community-report/>

⁹ Health Act 1956. https://www.legislation.govt.nz/act/public/1956/0065/latest/DLM305840.html?search=ta_act%40act_H_a c%40ainf%40anif an%40bn%40rn_25_a&p=2

protect against discrimination because of gender identity or gender expression, or people's sex characteristics or intersex status. Adjustments to the Bill may be necessary to ensure there is adequate protection.

Clauses 8 and 9 Clarification

Clause 8 Offence to perform conversion practice on person under age of 18 years or lacking decision-making capacity

Clause 9 Offence to perform conversion practice that causes serious harm

29. NCWNZ members encountered difficulties interpreting these two clauses.
30. "Serious harm" is a concept that the courts are well used to through the criminal law, and it includes emotional and psychological harm. If someone performs conversion practices on a competent adult, where serious harm does not result, the person/conversion practitioner won't have committed a criminal offence, but there will be civil pathways of dispute resolution. If someone performs conversion practices on a child or adult with impaired decision-making capability, but serious harm does not result, that is still a criminal offence, and the person/conversion practitioner would be liable for up to three years imprisonment.
31. NCWNZ queries why an offence under Clause 8 should be subject to a lesser penalty than that defined under Clause 9.
32. We suggest the Committee consider another subsection be added to Clause 8 or have included in some way, that it is an offence of negligence, where a person having a responsibility to the second person, breaches that duty of care by subjecting them to conversion therapy and thereby causing them harm.
33. Members raised further concern at the apparent lack of protection for people in the 18-25 age bracket. This is an age where many people are both psychologically vulnerable and exploring their gender and sexual identities. It may well be the age that many "come out" for the first time and experience the most resistance. While it may not be appropriate to request that the age limit in Clause 8 be changed to 25 years, there needs to be discussion at Committee about how "lacking decision-making capacity" in Clause 8 and the provisions in Clause 9 are likely to be interpreted, and whether these provide sufficient protection for this age group.

Parents

34. There has been public discussion as to how the Bill and especially Clauses 8 and 9 might impact on parents. The role of parents is again a very sensitive and difficult one, particularly in regard to the age of consent to medical treatment, and it is important that there is clear guidance on this.
35. We consider there is sufficient provision in the Bill to allow parents to have conversations with their children and advise their children, and that the Bill has struck

the right balance between allowing parents to advise their children and banning conversion practices.

Clause 9 1(b) Definition of reckless

36. We believe that the definition of “reckless” must be made clearer. In the Land Transport Act, the term reckless refers to a person “operating a vehicle on a road carelessly or without reasonable consideration for other persons using the road”. It appears that the Clause in the current Bill is referring to serious harm being caused whether the person engaging in conversion practices intended it to cause harm or not. It is necessary to have this stated more clearly, thereby removing the possibility of misinterpretation or manipulation.

Clause 10 Consent not defence

Clause 11 Person on whom conversion practice performed not party to offence

37. NCWNZ particularly supports Clause 10 that consent is not a defence, and Clause 11, that a person on whom conversion practice performed may not be charged as a party to an offence, as these provisions protect vulnerable people who are very likely to have been coerced or manipulated or made to believe this was in their best interest.

Clause 12 No prosecution without Attorney General’s consent

38. NCWNZ questions the reason for this provision. There should be no need for the Attorney General’s consent for prosecution. This adds another layer of bureaucracy and potential for political interference in the lives of LGBTQI people. Performing conversion practices should be treated like most crimes and not require such a high threshold for prosecution. While we do not believe that widespread prosecution is the solution to preventing conversion therapy or indeed solving the root causes, we believe prosecution should be a judgement made by the justice system, not politicians.

39. We recommend that Clause 12 is removed.

Implementation of legislation and related matters

Education and information

40. The Regulatory Impact Analysis report from Ministry of Justice¹⁰ states that there will be no impact on the effectiveness of the Bill by “*the level of effective compliance or non-compliance with applicable obligations or standards*” or “*the nature and level of regulator effort put into encouraging or securing compliance*”. We consider this to be somewhat optimistic. It will be critically important that the Human Rights Commission works with organisations and networks of LGBTQI people to inform people of the legislation, their rights, how to obtain redress, and where to access support to obtain

¹⁰ Ministry of Justice. 2021. Departmental Disclosure Statement.
<http://disclosure.legislation.govt.nz/assets/disclosures/bill-government-2021-56.pdf>

redress. Education for the general public about conversion practices, their harmful effect, and details of the law prohibiting conversion practices, is also vitally important.

41. As stated above, parts of the Bill need clarification and, critically, in accompanying education and publicity, more work needs to be done to simplify the definition. It is crucial that information on what is, and what is not, acceptable is available in forms that everyone is able understand.

Support to Survivors and Accident Compensation

42. The Explanatory Note to the Bill states *“The (Human Rights) Commission will also play an important role in providing education about conversion practices and the prohibition, and in making survivors aware of how to access the support that they may need”*.
43. NCWNZ strongly urges sufficient resourcing be provided to the Commission, supporting organisations and networks, to make this a reality. It is entirely objectionable for victims and survivors of conversion therapy to have to navigate a bureaucratic maze to get help. Victims and survivors are already vulnerable. Many will not have the capacity to navigate the complicated processes of the Human Rights Commission, Human Rights Review Tribunal, or the criminal justice system. As a first step, the Government should extend the scope of Accident Compensation to cover mental injury as a result of conversion practices. This would provide a more certain, simple, and familiar process.

Conclusion

44. NCWNZ strongly supports this Bill, and our recommendations comments and suggestions aim to strengthen further the rights and protection of our LGBTQI community.
45. We would be pleased to make an oral presentation to the Committee.



Suzanne Manning
NCWNZ Board



Raewyn Stone
Convenor NCWNZ Health Standing Committee